PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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BIENNIAL REVIEW 2000 STAFF REPORT RELEASED

The Commission has released a staff report summarizing an extensive staff review of the Commission's rules undertaken as part of the 2000 Biennial Review. The biennial review is conducted pursuant to Section 11 of the Communications Act of 1934, as amended, and Section 202(h) of the Telecommunications Act of 1996. These sections, collectively, require the Commission (1) to review biennially its regulations pertaining to telecommunications service providers and broadcast ownership; and (2) to determine whether economic competition has made those regulations no longer necessary in the public interest. The Commission is directed to modify or repeal any such regulations that it finds are no longer in the public interest.

In preparing the report, Commission staff from each Bureau and Office endeavored to review all rules pertinent to its operations to determine whether to recommend that the Commission modify or eliminate any rules. The staff considered (1) the purpose of the rule; (2) the advantages of the rule; (3) the disadvantages of the rule; (4) what impact competitive developments have had on the rule; and (5) whether to recommend modification or revocation of the rule. Additionally, Appendices to the staff report analyze the purpose, benefits and disadvantages of each relevant rule part, the status of competition for telecommunications services providers affected by the rule part, and any staff recommendation for modifying or repealing rules within the part.

The staff did not limit its review to the rules implicated by section 11 and section 202(h). The staff determined that a broad review of Commission rules even beyond the scope of the statutory requirements could provide significant benefits, and that the biennial review process provided another opportunity to ensure that the Commission's rules are up-to-date.

The report reflects staff recommendations rather than formal Commission opinions. After receiving public comment on these documents, the Commission will issue a report, determining which if any regulations are no longer necessary in the public interest, as required by the statute. The Commission expects that it will concurrently or subsequently initiate notice and comment rulemaking proceedings, pursuant to the Administrative Procedures Act,[1] to modify or eliminate selected rules identified in the Commission report.

Pursuant to Section 1.430 of the Commission's rules, we seek comment on the staff report and rule analysis being released today. In particular, we request comment on (1) the analysis of the statutory requirements for this biennial review; (2) whether staff's analysis is an appropriate way to determine whether a rule is necessary in the public interest; (3) the process used for conducting the review; and (4) the specific recommendations contained in the staff report and the rule analysis. The Commission also encourages parties to comment on or recommend changes to rules that are not specifically identified in the staff report, and to submit suggestions regarding substantive or administrative provisions that might enable the Commission to operate more efficiently and effectively. We also seek comment on the staff's suggestion that the Commission conduct an initial biennial review analysis when it conducts rulemaking

[1] 5 U.S.C. § 553.

proceedings.

Filing Procedures

In order to facilitate review of all comments, reply comments, and other documents, the cover page should denote that it pertains to the Biennial Review 2000, and should include an appropriate caption, such as "Biennial Review 2000 Comments" or "Biennial Review 2000 Reply Comments." **All filings should include headings that correspond directly to the headings in the staff report or rule analysis, and each heading should begin on a new page**. If a portion of a party's filing does not fall under a particular heading in the staff report or rule analysis, it should be included in a clearly-labeled section at the beginning of the filing.

Interested parties may file comments by **October 10, 2000** and reply comments by **October 20, 2000**. Pursuant to section 1.51(c) of the Commission's rules, parties should file an original and four copies of all comments, reply comments, and other documents. Comments, reply comments and other documents should be sent to the Office of the Secretary, Federal Communications Commission, 445 12th St., S.W., Washington, D.C. 20554. Parties should also file three copies of any comments, reply comments or other documents with Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, 445 12th St. S.W., Washington, D.C. 20554. Parties may also submit comments, reply comments, and other documents electronically, as provided in section 1.51 of the Commission's rules. Parties are also asked to submit comments and reply comments on diskette. Diskettes are in addition to, and not in lieu of, paper copies. Diskettes should be submitted to Sheryl Todd.

The Biennial Review 2000 Staff Report and appendices are available on the Commission's Internet site at http://www.fcc.gov. Copies are also available from the Commission's copy contractor, the International Transcription Service, at (202) 857-3800, TTY (202) 484-8831.

Action by the Commission on September 14, 2000. With Chairman Kennard; Commissioners Ness, Powell and Tristani; Commissioner Harold Furchgott-Roth issuing a seperate statement.

News Media contact: David Fiske (202) 418-0513
Commission contact: Sheryl Todd, (202) 418-7400, TTY (202) 418-0484

-FCC-

Federal Communications Commission
Biennial Regulatory Review 2000
Staff Report
September 18, 2000

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OVERVIEW

This Staff Report summarizes the findings of an extensive review of the Federal Communications Commission's rules. Each Bureau and Office reviewed the rules pertinent to its operations to determine whether to recommend that the Commission modify or eliminate any rules. Accompanying this written report is a rule part analysis that identifies the Commission's rule parts, explains the purpose, benefits and disadvantages of the particular rule or rule part, and lists any staff recommendation for modifying or repealing any rules within each part. The report and analysis are steps in the Commission's process of conducting biennial regulatory reviews pursuant to section 11 of the Communications Act of 1934, as amended (Communications Act), and section 202(h) of the Telecommunications Act of 1996 (1996 Act).[1] These documents are staff recommendations, and do not reflect formal Commission opinions or binding determinations.

BACKGROUND

Legal Authority

The Telecommunications Act of 1996, which was intended "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."[2] The 1996 Act significantly amended the Communications Act of 1934 to permit and encourage competition in various communications markets. Congress anticipated that, as competition developed, market forces would reduce the need for regulation.[3] Therefore, in addition to requiring the Commission to take certain actions to open markets to competition, Congress required the Commission to review certain of its regulations every two years and to modify or repeal those regulations that are no longer "necessary in the public interest."[4]

Section 11 of the Communications Act, which was added by the 1996 Act, provides:

> (a) Biennial Review of Regulations. – In every even-numbered year (beginning with 1998), the Commission –
>
> > (1) shall review all regulations issued under this Act in effect at the time of the review that apply to the operations or activities of any provider of telecommunications service; and
> >
> > (2) shall determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service.
>
> (b) Effect of Determination. – The Commission shall repeal or modify any regulation it determines to be no longer necessary in the public interest.

Section 202 of the 1996 Act addresses matters regarding broadcast ownership. Section 202(h) provides:

> The Commission shall review its rules adopted pursuant to this section and all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications

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1 47 U.S.C. § 161; Telecommunications Act of 1996, Pub. Law No. 104-104, § 202, 110 Stat. 56 (1996).

2 1996 Act, introductory statement.

3 *See* Joint Managers' Statement, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 113 (1996) at 1 (stating that the 1996 Act would establish a "pro-competitive, deregulatory national policy framework").

4 47 U.S.C. § 161; 1996 Act, § 202(h).

> Act of 1934 and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest.

Section 11 and section 202(h), collectively, require the Commission: (1) to review biennially its regulations that pertain to (a) the operations or activities of telecommunications service providers,[5] and (b) broadcast ownership; and (2) to determine whether those regulations are no longer necessary in the public interest as a result of meaningful economic competition. Following such review, the Commission is directed to modify or repeal any such regulations that are no longer necessary in the public interest.[6]

In addition to these statutory requirements, the Commission has discretion to suspend, modify, revoke or waive any of its regulations for good cause, pursuant to other applicable requirements, such as the Administrative Procedure Act.[7] Thus, for example, the Commission may consider whether circumstances other than economic competition justify modification or repeal of particular rules.

Summary of 1998 Biennial Regulatory Review

In 1998, the Commission reviewed all of its regulations. The Commission did not attempt to identify or limit its review to rules that "apply to the operations or activities" of telecommunications service providers.[8] For the 1998 review: (1) each of the operating bureaus and the Office of Engineering and Technology conducted a review of the rules under their jurisdiction; and (2) members of the Office of Plans and Policy, the Chief Economist and his staff, and members of the Competition Division in the Office of General Counsel conducted a parallel review of Commission rules. These reviews were not limited to whether "meaningful economic competition" justified changes, but instead considered whether, for any reason, modification or elimination of a rule would serve the public interest.

The team from the Office of Plans and Policy/Chief Economist/Competition Division used the following questions in its review:

> Is the original or present purpose of the regulation still valid?
> If a valid purpose for the regulation exists, how well does the regulation achieve the purpose?
> Even if a regulation achieves its purpose, do the burdens it creates outweigh its advantages?
> Is there a less burdensome alternative that will produce similar benefits?

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[5] "Telecommunications service" is "the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available to the public…." 47 U.S.C. § 153(46).

[6] Congress also directed the Commission to forbear from applying its regulations or provisions of the Communications Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, if, *inter alia*, the enforcement of such regulation or provision is not necessary for the protection of consumers and if forbearance is consistent with the public interest. 47 U.S.C. § 160(a). In determining whether forbearance is consistent with the public interest, the Commission must consider whether forbearance would enhance competition among telecommunications service providers. 47 U.S.C. § 160(b).

[7] 47 C.F.R. § 1.3.

[8] 47 U.S.C. § 161.

Does the regulation overlap, interfere, or conflict with other regulations such that modification is warranted?

The Commission received substantial public input. For example, each of the Bureaus, together with the Office of General Counsel, hosted a series of public fora to solicit ideas regarding rules that might warrant repeal or modification. In addition, staff received input during a series of meetings held by practice groups of the Federal Communications Bar Association.

The 1998 Biennial Regulatory Review led to the initiation of a wide range of deregulatory and streamlining proposals.[9] For example, the Commission initiated 32 proceedings and modified or eliminated hundreds of rules, particularly ones that affected the operations and activities of telecommunications service providers.

THE 2000 BIENNIAL Regulatory REVIEW

This review attempts to build upon the work completed in the 1998 Biennial Regulatory Review, and to establish a foundation for future reviews. In particular, the 2000 Biennial Regulatory Review provides greater documentation of the staff's review. The review process is incremental, however, and staff expects that even greater documentation will occur in future years. In addition, staff recommends that the Commission consider setting forth an analysis similar to the analysis used in this staff report whenever the Commission adopts new rules. Such an analysis may include the reason for the rule, whether the rule effectively accomplishes its intended purpose, and the status of competition at the time the rule is enacted. Conducting such an analysis at the time new rules are adopted might help ensure that new regulatory requirements are carefully tailored to achieve their intended regulatory goals. Such analysis might also significantly reduce the burdens associated with future biennial reviews.

In evaluating the rules, staff applied a consistent analysis to determine whether to recommend modification or elimination of Commission rules. Staff's review considered (1) the purpose of the rule; (2) the advantages of the rule;[10] (3) the disadvantages of the rule;[11] (4) what impact competitive developments have had on the rule; and (5) whether to recommend modification or revocation of the rule. This analysis allowed the staff to make reasoned determinations about whether a rule should be changed or eliminated either because of competitive developments, or for other reasons. For example, staff considered whether the underlying purpose of the rule is still relevant, and, if so, whether that purpose could be accomplished more effectively in another manner.

Although there may be other ways to determine whether a Commission rule continues to be necessary in the public interest, staff believes that the analysis it used is a reasonable way to carry out the requirements of section 11 and section 202(h). In addition, the analysis staff used is relatively easy to apply, and permits consideration of all relevant factors in determining whether a rule should be modified or revoked. Staff therefore recommends that the Commission adopt this analysis when it makes public interest determinations.

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[9] *See* Appendix II for a listing of the completed and ongoing proceedings that were initiated as a result of the 1998 Biennial Regulatory Review.

[10] This includes consideration of how adroitly, precisely, and cost-effectively the rule addresses the problem at issue.

[11] This includes consideration of whether the rule is over- or under-inclusive in its scope, and whether compliance imposes unnecessary costs.

Method and Scope of Review

The Commission has devoted substantial time and resources to the 2000 Biennial Regulatory Review. In the fall of 1999, Commission staff began to create a computer database of Commission rules. In early 2000, a team consisting of representatives from each Bureau and Office began to develop a method for conducting the staff review. The team agreed to a framework and analysis that each Bureau and Office would use in reviewing its rules. This framework was intended to ensure a well-reasoned and consistent review across the agency. That framework included the following:

> a.) Each Bureau and Office would endeavor to look at all of its rules – not only rules that are specifically implicated by sections 11 and 202(h) – and consider whether repeal or modification might be appropriate.

The benefits associated with modifying or eliminating regulations are not limited to the rules implicated in sections 11 and 202(h). The team determined that a broad review of Commission rules, even beyond the scope of statutory requirements, could provide significant benefits. The team reasoned, for example, that eliminating unnecessary regulations would likely reduce compliance costs of service providers, which in turn could reduce charges to consumers. Similarly, the team deemed it reasonable to consider whether any regulations could be modified so that they achieve their intended goals more effectively or in a less burdensome manner. In addition, the team determined that its decision to conduct a broad rule review would reduce the potential for disagreement about what rules are subject to the mandatory review requirements in sections 11 and 202(h).

> b.) As noted above, the team determined that each Bureau and Office would use a consistent analysis, which would consider the advantages and disadvantages of the existing rules and what impact, if any, competitive developments have had on each rule. Each Bureau and Office would consider whether revocation or modification might be appropriate for any reason. The review would not be limited to whether changes were warranted as a result of economic competition.

Although sections 11 and 202(h) require the Commission to determine whether rules remain necessary in the public interest as a result of competition, the team determined that there might be other relevant bases for modifying or revoking a rule. For example, a rule might be obsolete as a result of technological developments. Or modification might be appropriate as a result of changes in industry practices or judicial decisions, or because a rule is duplicative of or contradictory to other rules. Although the Commission has worked hard to keep its rules current with industry, judicial, and other developments, the biennial regulatory review process provides another opportunity to ensure that the Commission's rules are up-to-date.

The team also recognized that, even where competition develops, it will not always and immediately eliminate the need for regulation. For example, there may be certain segments of the market that would not receive service of acceptable quality or at affordable rates absent regulation. Thus, even if a regulation *generally* is no longer necessary in the public interest as a result of competition, there may be reasons to retain it, at least with respect to certain segments of the market.

c.) Staff would prepare a report that summarizes the review conducted by each Bureau and Office. In addition, staff would provide a written description of the analysis used in reviewing each rule part implicated by sections 11 or 202(h).

The staff report includes highlights of the staff's review, as well as recommendations for Commission action. The staff report is not limited to rules that are subject to the biennial regulatory review requirements of sections 11 and 202(h).

The rule part analysis provides additional documentation of the staff's review of each rule part that is implicated by section 11 or section 202(h). It is intended to enable the public to understand the reasoning behind the staff's review and recommendation. The analysis strives to encompass any rule that might affect the operations or activities of telecommunications service providers.

The team recognized that completing a comprehensive rule review, as it proposed, would be time-consuming and labor intensive. The team concluded that it should give priority to satisfying statutory requirements, and thus would focus its efforts on completing the rule analysis for rules that are implicated by sections 11 and 202(h).

The analysis generally documents review by rule part, but it identifies many of the individual rules that the staff recommends be modified or repealed. Staff determined that in most instances, providing analysis at the rule part level was sufficient to identify the reasoning used and the basis for the recommendations. In some instances, however, staff determined that it should include its analysis of rule subparts. For example, where only portions of the rule part are implicated by section 11, or where more than one Bureau or Office shares responsibility for overseeing a rule part, the analysis may be done by subpart.

Analytical Framework

The analytical framework that staff used for this Biennial Regulatory Review recognizes that significant economic benefits can be achieved by fostering competition. Although regulation may sometimes be necessary to correct market failures or prevent the accrual of excessive market power,[12] in most instances market forces will yield economically efficient results. Staff's review thus sought to maximize the potential for self-correcting market action, and to suggest deregulatory action warranted by economic and technological developments. Staff considered factors such as the effect a rule has on competitive entry into specific services, whether the rule encourages resource-efficient technologies, the effect of the rule on costs for the industry and the agency, and whether developments in the definition and structure of the relevant market would suggest that the elimination or modification of the rule is appropriate. Staff paid particular attention to rules that seek to limit the exercise of market power in markets transitioning to a more competitive structure.

The staff also recognized that some of the Commission's goals might require regulatory action even when developments like those mentioned above are taken into consideration. For example, the Commission has sought to ensure that all Americans have access to the widest variety of telecommunications services and that audiences have access to diverse media sources. Staff

[12] For a broad discussion of the causes of market failure see A. Mas-Colell, M.D. Whinston, and J. R. Green, MICROECONOMIC THEORY, (1995), Chapters 11-14.

attempted to consider all of the Commission's stated policy concerns when it reviewed the agency's rules.

Structure of the Staff Report

Staff endeavored to review all of the Commission's rules rather than limit its review to rules covered explicitly by section 11 of the Communications Act and section 202(h) of the 1996 Act. Staff determined that a broad review of the Commission's rules could provide significant benefits, although it gave priority to the rules that are implicated in sections 11 and 202(h).

Each Bureau and Office conducted this review by seeking input from staff and industry groups. In conducting this review, staff considered (1) the purpose of the rule; (2) the advantages of the rule; (3) the disadvantages of the rule; and (4) the impact competitive developments may have had on the need for the rule.

This Report summarizes staff's review of the Commission's rules, the status of ongoing and recent initiatives, and recommendations on whether specific rules should be kept in place, modified, or repealed. The staff's recommendations are also reported in the attached rule part analysis. The rule part analysis summarizes staff's findings and should be viewed as works in progress. The analysis does not reflect formal Commission opinions or binding determinations.[13]

Staff recommends that the Commission seek public comment on the Report and the rule part analysis.

Further Action to Complete 2000 Biennial Regulatory Review

This Staff Report is merely one step in the Commission's 2000 Biennial Regulatory Review. Section 11 and section 202(h) mandate Commission determinations. Staff proposes that the Commission release and seek comment on the Staff Report and rule part analysis. After receiving public comment, staff anticipates that the Commission would issue a report before December 31, 2000. The Commission report would determine what if any regulations are no longer necessary in the public interest, in accordance with section 11 and section 202(h).

Pursuant to the Commission's determinations, staff expects that the Commission would initiate proceedings to modify or eliminate selected rules. These proceedings would conform with Commission procedural rules and the Administrative Procedure Act. Although some of these proceedings will be initiated in the year 2000, many will not be. The statute does not require the Commission to repeal or modify its rules by the end of 2000.[14]

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[13] This Staff Report does not affect the Commission's rules in any way. Parties that seek a rulemaking or waiver of a specific rule may avail themselves of sections 1.401 and 1.3 of the Commission's rules. 47 C.F.R. §§ 1.401, 1.3.

[14] *See* generally 47 U.S.C. § 161.

Common Carrier Bureau

The Common Carrier Bureau advises the Commission regarding the regulation of telecommunications service providers, including issues related to interstate telecommunications service, interstate access service, and local exchange competition. The Bureau administers rules and policies designed to foster competition in telecommunications markets, promote widespread availability of telecommunications, and protect consumers.

The Common Carrier Bureau has focused in recent years on adopting market-opening and universal service rules for the local exchange and long distance markets. The Bureau has also focused on review of applications by Bell Operating Companies to provide long distance service as well as review of telecommunications company mergers. In addition, the Bureau has devoted considerable resources to consideration of the regulatory reforms that should occur as competition in the provision of telecommunications services develops.

In evaluating the state of competition, the Bureau has found that the long distance services market is competitive, but competition in the local exchange and exchange access markets is nascent. While incumbent local exchange carriers (LECs) and the new local exchange entrants disagree about the extent to which local competition has developed, competition for local exchange services has taken root and is increasing.

Three recent reports concerning competitive developments in the local exchange market conclude that competition is growing, although competitive local exchange carriers still serve only a very small portion of local exchange lines. "Telecommunications @ the Millennium," a report by the FCC Office of Plans and Policy, states that "[o]n the fourth anniversary of the Act, we see competition in the local market beginning to take hold."[15] The report states that, "in 1996, when the Act was passed, competitors had a one percent share of the local market,"[16] adding that "[t]heir share of the local market has increased to 4 percent of lines served and over 6 percent of local service revenue."[17] The report states that "[l]ocal competitors have been particularly successful in the business market, where competitors have added 65 percent of all new lines deployed in the third quarter of 1999."[18] The report adds that "more people are beginning to see wireless telephones as substitutes for their wireline services"[19] in light of dramatic price decreases and increases in service quality. These trends are further explored in "Local Telephone Competition at the New Millennium," a report by the FCC Common Carrier Bureau.[20] A report by the United States General Accounting Office, "Development of Competition in Local Telephone Markets," states that, "[t]o date, little competition has emerged in local telephone markets,"[21] but concludes that "further competition seems likely to develop in local telephone markets."[22] The report notes that "competing carriers, . . . are using all entry modes envisioned by the act, legal and regulatory

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15 Telecommunications @ the Millennium, at 17 (rel. Feb. 8, 2000).

16 *Id*. at 18.

17 *Id*. These data include independent competitive LECs and the local exchange operations of large long distance carriers. *Id*. at 17-18.

18 *Id*. at 18.

19 *Id*. at 22.

20 Local Telephone Competition at the New Millennium, CCB (rel. Aug. 2000) (summarizing Dec. 31, 1999 data from FCC Forms 477 and 499-A).

21 Development of Competition in Local Telephone Markets, at 4 (rel. Jan. 2000).

22 *Id*. at 6.

issues are . . . becoming clarified, and the packaging of varied telecommunications services may enable firms providing other telecommunications services to effectively compete for local telephone customers."[23]

In contrast to the market for local exchange and exchange access service, the markets for long distance and customer premises equipment (CPE) are competitive and have been increasingly deregulated. Long distance prices (international and domestic), as approximated by average revenue per minute, have fallen by 34 percent since 1993.[24] Similarly, a vibrantly competitive market has developed for CPE, and, as a result, basic voice telephones are now available from an array of suppliers with a myriad of options at extremely low prices.[25]

It is against this background that we begin our second "Biennial Regulatory Review" of rules for common carriers.

Scope of Review

As part of the review process, initiated by the Year 2000 Biennial Regulatory Review Working Group, the Common Carrier Bureau has reviewed all of the rules within each of the following parts that affect common carriers.

Part 32 – Uniform System of Accounts - Establishes mandatory minimum accounting standards for certain common carriers.
Part 36 – Jurisdictional Separations - Contains an outline of the separations procedures designed primarily for the allocation of property costs, revenues, expenses, taxes and reserves between the state and interstate jurisdictions.
Part 42 – Record Retention Requirements - Prescribes the regulations governing the preservation of records of communications common carriers.
Part 43 – Reporting Requirements - Prescribes specific filing requirements for communications common carriers and certain of their affiliates.
Part 51 – Interconnection - Establishes interconnection obligations for LECs.
Part 52 – Numbering - Establishes conditions for the administration and use of telecommunications numbers for provision of telecommunications services in the United States.
Part 53 – Special Provisions Concerning Bell Operating Companies - Establishes special requirements applicable to the Bell Operating Companies, pursuant to 47 U.S.C. §§ 271 and 272.
Part 54 – Universal Service - Establishes the mechanisms to ensure the provision of Universal Service.
Part 59 – Infrastructure Sharing - Establishes the general duty of incumbent LECs to make available to certain qualifying carriers network infrastructure, facilities, functions, technology, and information.
Part 61 – Tariffs - Prescribes the framework for the initial establishment of and subsequent revisions to tariff publications for certain carriers.
Part 63 - Extension of Lines - Prescribes a regulatory framework for construction of wireline common carrier infrastructure.
Part 64 – Miscellaneous - Addresses a broad range of common carrier issues.
Part 65 – Rate of Return - Establishes procedures and methodologies for Commission prescription of an authorized unitary interstate exchange access rate of return and individual authorized rates of return for the interstate exchange access rates of certain other carriers.

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23 *Id.*

24 Telecommunications @ the Millennium, at 3.

25 *2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations, Notice of Proposed Rulemaking*, 15 FCC Rcd 10525, 10529 (2000) (*Part 68 NPRM*).

Part 68 – Connections of Terminal Equipment – Permits direct connection to the network of registered terminal equipment. Provides uniform technical standards for equipment to prevent network harm and ensure that telephones are compatible with hearing aids.
Part 69 – Access Charges - Establishes rules for access charges for interstate or foreign access services for incumbent LECs.

Recent and Ongoing Activities

Recently, the Commission has begun a number of proceedings designed to reduce or simplify wireline common carrier regulation in light of increasing local exchange competition and other industry developments. Among other things, the Commission is currently conducting rulemaking proceedings to review: (1) Part 32 of the Rules, Uniform System of Accounts for Class A and B Telephone Companies, and the Commission's ARMIS (Automated Reporting Management Information System) information reporting system for incumbent LECs; (2) Part 36 of the Rules, Jurisdictional Separations; and (3) Part 68 of the Rules, Connection of Terminal Equipment to the Telephone Network. In addition, the Commission initiated several common carrier rulemakings as part of the 1998 Biennial Regulatory Review.[26]

Accounting and ARMIS Requirements

The Commission is currently conducting a comprehensive review of its Part 32 accounting and related rules and its ARMIS reporting requirements. This comprehensive review will complement the Biennial Regulatory Review process and ensure that the goal of continued deregulation is vigorously pursued.[27] This review will consider the need for various accounting

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[26] The 1998 Biennial Regulatory Review common carrier proceedings include: (1) *1998 Biennial Regulatory Review – Review of Accounting and Cost Allocation Requirements, USTA Petition for Rulemaking*, CC Docket No 98-81; (2) *1998 Biennial Regulatory Review - Review of ARMIS Reporting Requirements*, CC Docket No. 98-117; (3) *1998 Biennial Regulatory Review – Testing New Technology*, CC Docket No. 98-94; (4) *1998 Biennial Regulatory Review – Repeal of Part 62 of the Commission's Rules*, CC Docket No. 98-195; (5) *Policy and Rules Concerning the Interstate, Interexchange Marketplace/Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 98-183; (6) *1998 Biennial Regulatory Review - Petition for Section 11 Biennial Regulatory Review filed by SBC Communications*, CC Docket No. 98-177; (7) *1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Docket No. 98-171; (8) *1998 Biennial Regulatory Review – Modifications to Signal Power Limitations Contained in Part 68 of the Commission's Rules*, CC Docket No. 98-163; (9) *1998 Biennial Regulatory Review – Review of Depreciation Requirements for Incumbent Local Exchange Carriers*, CC Docket No. 98-137; (10) *1998 Biennial Regulatory Review - Part 61 of the Commission's Rules and Related Tariffing Requirements*, CC Docket No. 98-131; (11) *1998 Biennial Regulatory Review – Elimination of Part 41 Telegraph and Telephone Franks*, CC Docket No. 98-119; and (12) *1998 Biennial Regulatory Review - Review of Computer III and ONA Safeguards*, CC Docket No. 98-10. Most of these proceedings have already been completed. The procedural status of each of these proceedings is provided in Appendix II.

[27] Common Carrier Bureau Announces Initiative to Undertake Comprehensive Review of Part 32 and ARMIS Requirements, *Public Notice*, 14 FCC Rcd 6345 (1999).

and reporting requirements and whether they impose unnecessary burdens on incumbent LECs as local exchange competition develops. Resolution of these issues could have a significant effect on State commissions because most of them rely on the FCC accounting and reporting requirements.

The review is being conducted in two phases. Phase 1, which was completed in March 2000, was designed to focus on immediate streamlining measures.[28] Phase 2 will "examine broader and more extensive deregulatory measures."[29] The Commission took the following specific steps to streamline its accounting requirements in Phase 1: (1) eliminated the expense matrix filing requirement; (2) allowed carriers to reduce the cost allocation manual (CAM) audit requirement from an annual financial statement audit to a biennial attestation engagement; (3) relaxed the affiliate transactions requirements for services; (4) eliminated the 15-day pre-filing requirement for certain CAM changes; (5) eliminated the 30-day notification requirement for establishment of temporary or experimental accounts; (6) allowed carriers to record contingent liabilities without agency review; (7) eliminated the reclassification requirement for certain property held for future use; and (8) eliminated the reclassification requirement for certain plant under construction.[30] The *Phase 1 Order* also streamlined the ARMIS reporting requirements by, among other things, eliminating certain Tables, eliminating reporting items from a number of Tables, and establishing new threshold levels for certain reporting items.[31]

The Common Carrier Bureau conducted a number of public workshops this spring, including one workshop devoted solely to issues concerning mid-sized incumbent LECs, to solicit ideas on reform initiatives for Phase 2 of this proceeding.[32] These workshops have covered the Part 32 chart of accounts, the affiliate transaction rules and certain Part 64 rules, ARMIS financial reporting requirements, ARMIS non-financial reports, and other rules of concern to mid-sized carriers. Interested parties have made numerous proposals for simplification of the Commission's accounting and reporting requirements in these workshops. The proposals discussed at the workshops include, among other things: (1) use of the simplified Class B accounting rules by all carriers; (2) elimination of various accounts and sub-accounts; (3) elimination of the requirement for agency approval to implement changes in Financial Accounting Standards Board (FASB) Generally Accepted Accounting Principles (GAAP); (4) more flexibility in dealing with construction costs; and (5) streamlining and eventual elimination of the ARMIS reporting requirements. The Bureau recommends that the Commission adopt a Phase 2 Notice of Proposed Rulemaking in this proceeding.

Jurisdictional Separations

The Commission has instituted a review of the Part 36 jurisdictional separations procedures, which govern the division of the carriers' regulated costs between the state and federal

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28 *Id*. at 6346.

29 *Id.*

30 *Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 1* (*Phase 1 Order*), *Report and Order*, CC Docket No. 99-253, FCC 00-78, Mar. 8, 2000.

31 *Phase 1 Order*, FCC 00-78 at 4.

32 Common Carrier Bureau Announces A Series of Workshops for Phase 2 of the Comprehensive Review of Accounting and Reporting Requirements, *Public Notice*, DA 00-754 Apr. 5, 2000 at 1. *See also,* Common Carrier Bureau Announces Mid-Sized Carrier Workshop for Phase 2 of the Comprehensive Review of Accounting and Reporting Requirements, *Public Notice*, DA 00-926 Apr. 26, 2000.

jurisdictions.[33] The costs allocated to the interstate jurisdiction by Part 36 are recovered through charges regulated by the FCC, and the costs allocated to the state jurisdiction are recovered through charges regulated by the states.

The Commission stated that the purpose of the *Separations Reform Notice* was to consider what changes to our separations procedures might be appropriate in light of legal, technological and market structure changes affecting telecommunications. The Commission specifically requested comment on: (1) what changes in the law and within the industry may warrant revision of the separations process; (2) the criteria that should be used in evaluating the existing separations procedures and proposals for reform; (3) whether separations rules are needed during the transition to a competitive market; (4) a number of specific industry proposals for replacement of the existing separations procedures; and (5) how various options for separations reform would affect revenue requirements and prices.[34]

Pursuant to the requirements of section 410(c) of the 1996 Act, the Commission referred these issues to the Federal-State Joint Board established in the separations reform proceeding for the preparation of a recommended decision.[35] On July 21, 2000, the Joint Board recommended that the Commission freeze certain elements of the separations process, including the jurisdictional allocation factors, for five years while the Joint Board and the Commission continue to review issues regarding comprehensive separations reform.[36]

Part 68 Equipment Registration

Prior to the adoption of the Part 68 rules, in 1975, incumbent LECs generally prohibited direct connection of third party customer premises equipment (CPE) to their networks, thus maintaining an essential monopoly over the provision of CPE.[37] Under Part 68, the incumbent LECs must permit direct connection to the public switched telephone network of CPE that is certified as meeting certain technical standards, which are designed to prevent harm to the public switched network.[38] The Commission develops these technical standards, and plays a major role in

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[33] *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, Notice of Proposed Rulemaking,* 12 FCC Rcd 22120 (1997) (*Separations Reform Notice*).

[34] *Separations Reform Notice*, 12 FCC Rcd at 22139.

[35] *Id*. at 22124.

[36] *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, *Recommended Decision*, FCC 00-2 (rel. July 21, 2000).

[37] The Commission's rules define CPE as equipment employed on the premises of a person other than a carrier to originate, route or terminate telecommunications. 47 C.F.R. §153(14).

[38] The Commission's Part 68 rules are designed to ensure that equipment directly connected to the public switched network will not: (1) result in electrical hazards to telephone company personnel; (2) damage telephone company equipment; (3) cause the malfunction of telephone company billing equipment; or (4) degrade service to persons other than the user of the equipment involved, persons the equipment user calls, or those who call the user. 47 C.F.R. § 68.3. Equipment manufacturers are not required to comply with the technical standards in Part 68, but CPE that is not certified as meeting these standards cannot be directly connected to the public switched network, and has limited marketability. The U.S.Customs Service also prohibits the importation of terminal

ensuring product compliance with these requirements.[39] A vibrantly competitive market for the provision of CPE has developed, resulting in an enormous increase in the variety of CPE available to consumers and major price reductions.[40]

The Common Carrier Bureau held a series of public fora on Part 68 to address streamlining issues in July 1999.[41] Representatives of the incumbent LECs, competitive LECs, equipment manufacturers, industry associations, terminal equipment testing laboratories and a state consumer counsel participated. Most of these participants agreed that: (1) the public interest requires that carrier networks be protected from harm; (2) the industry and consumers would benefit from a single uniform set of national technical standards; (3) Part 68 contains few, if any, unnecessary technical requirements; (4) the Commission should retain authority to ensure protection of the public switched network; and (5) the Commission's present functions of developing technical requirements, laboratory qualification, and equipment registration can be privatized in most respects.[42]

On May 22, 2000, the Commission released the *Part 68 NPRM*, which seeks comment on three possible options to streamline most elements of the process by which technical criteria are established for CPE.[43] These options include: (1) choosing a "gatekeeper" Standards Development Organization (SDO); (2) relying on multiple Standards Organizations; and (3) incorporating into the Commission's rules by reference specific standards developed by national standards organizations.

In the *Part 68 NPRM*, the Commission also proposed to streamline the registration process for CPE. Currently, the Commission itself reviews applications and issues grants for such equipment. The Commission proposed to cease this direct registration and asked for comments on one or a combination of the following options to privatize the registration process: (1) use Telecommunications Certification Bodies, which have just begun operations; (2) permit manufacturers to use a self-declaration of conformity process; or (3) permit manufacturers to use a verification process. The last two procedures are in use in Part 15 radio equipment licensing.[44]

Universal Service Reform for Rural Carriers

The Commission has also taken steps to begin consideration of rural carrier universal service issues in consultation with the Federal-State Joint Board on Universal Service (Joint Board). In 1997 the Joint Board created a Rural Task Force to study possible universal service reforms for rural telephone companies. The Rural Task Force is due to submit a report with

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equipment that is not registered pursuant to Part 68. *See* 19 U.S.C. § 3109.

[39] CPE can now be certified as complying with the Part 68 requirements by private Telecommunications Certification Bodies as well as the Commission. 47 C.F.R. § 160.

[40] *2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations, Notice of Proposed Rulemaking*, 15 FCC Rcd 10525, 10528 (2000) (*Part 68 NPRM*).

[41] Common Carrier Bureau Will Hold Fora on Deregulation/Privatization of Equipment Registration and Telephone Network Connection Rules (47 C.F.R. Part 68), CC Docket No. 99-216, *Public Notice*, DA 99-1108, June 10, 1999.

[42] *Part 68 NPRM*, 15 FCC Rcd at 10530-31, citing summary provided in Sprint Comments, filed July 20, 1999, at 1.

[43] *Part 68 NPRM*, 15 FCC Rcd at 10532-34.

[44] *See* 47 C.F.R. Part 15.

recommendations to the Joint Board by September 30, 2000. The Joint Board will then make its recommendations to the Commission, on the basis of the Rural Task Force's report.

In addition, in 1999 the Common Carrier Bureau granted the request of nine rural companies and removed the individual caps placed on the rural companies' high-cost loop support as a condition for grant of a study area waiver.[45] On August 4, 2000, in response to requests from more than 25 additional rural telephone companies, the Bureau removed these caps for all affected rural telephone companies, effective January 1, 2000.[46]

New Initiatives

In addition to the recent and ongoing actions discussed above, the staff recommends that the Commission address various other issues. These issues include intercarrier compensation, periodic review of the separate subsidiary requirement for independent telephone company provision of inter-exchange service, and eliminating outdated rules.

Intercarrier Compensation

The staff recommends that the Commission consider whether the various, sometimes conflicting, rules used for calculating intercarrier compensation for the origination and termination of traffic can be streamlined and harmonized. At present, the transport and termination provisions in sections 251 and 252 of the Communications Act and the Commission's implementing regulations in 47 C.F.R. §§ 51.701-717 govern the way the incumbent LECs and competitive LECs (CLECs) compensate one another for call completion. The Part 69 access charge rules generally govern the compensation that incumbent LECs receive for the use of their services in the origination and termination of interstate interexchange traffic. Access charge structures, generally similar to that in Part 69 of the Commission rules and adopted by individual states, govern compensation for the origination and termination of intrastate interexchange traffic. Moreover, Information Service Provider (ISP) traffic is exempt from interstate access charges. Instead, ISPs generally pay incumbent LECs local exchange business rates for their connections to the LEC local network.[47]

Since passage of the Telecommunications Act of 1996, the Commission has been adjusting incumbent LECs' access charges to reflect costs, which has resulted in price reductions totaling

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[45] *Petitions for Waiver and Reconsideration Concerning Sections 36.611, 36.612, 61.41(c)(2), 69.605(c), 69.3(e)(11) and the Definition of "Study Area" Contained in Part 36 Appendix – Glossary of the Commission's Rules Filed by Copper Valley Telephone, Inc., et al, Memorandum Opinion and Order on Reconsideration,* AAD Docket No. 93-93, DA 1845 (rel. Sept. 9, 1999).

[46] *Petitions for Waiver Concerning the Definition of "Study Area" Contained in Part 36 Appendix-Glossary of the Commission's Rules, Accent Communications, Inc., et al., Order,* CC Docket No. 96-45, DA 00-176 (rel. Aug. 4, 2000).

[47] This exemption was originally adopted by the Commission in 1983. *MTS and WATS Market Structure,* 97 FCC 2d 682, 711 (1983), *aff'd sub nom. National Ass'n of Reg. Util. Commissioners v. FCC,* 737 F.2d 1095, 1136-37 (D.C. Cir. 1984), *cert. denied,* 469 U.S. 1227 (1985). The Commission reaffirmed this exemption in 1988 and 1997. *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers,* 3 FCC Rcd 2631, 2633 (1988); *Access Charge Reform,* 12 FCC Rcd 15982, 16133-34, *aff'd sub nom. Southwestern Bell v. FCC,* 153 F.3d 523, 542 (8th Cir. 1998).

$6.4 billion.[48] The Commission most recently reduced access charges paid by long distance carriers by $3.2 billion.[49] This action continues to further the Commission's objective of developing a more economically rational approach to access charges while balancing various, and sometimes competing interests – including promotion of competition, deregulation, maintaining affordability for all and avoiding rate-shock for consumers.[50]

The staff recommends that the Commission seek comment on a broad range of economic, legal and policy issues raised by the current system of intercarrier compensation for the origination and termination of traffic, and seek to identify alternative approaches that are more consistent with the long term development of competition.[51] One purpose of such a proceeding would be to explore whether a single consistent approach to intercarrier compensation for traffic origination and termination could be developed. Staff believes that an appropriate, consolidated set of rules could reduce opportunities for arbitrage, eliminate incentives for inefficient market entry strategies, and reduce transaction costs. The staff further recommends that the Commission evaluate alternative compensation mechanisms in terms of their effect on local exchange, exchange access, and interstate interexchange competition. This proceeding should also consider the need for transitional mechanisms to ease the implementation of a new approach to intercarrier compensation for traffic origination and termination, and to avoid dislocations.

Independent Incumbent LEC

The staff also recommends that the Commission modify Part 64, subpart T to provide for triennial review of the requirement that independent incumbent LECs provide interexchange service through a separate subsidiary. Staff believes that such a review is necessary to insure that these separate affiliate requirements are eliminated when they no longer serve the public interest.

Eliminating Outdated Rules

The staff recommends that the Commission remove portions of the rules that are outdated. For example, in the Part 69 Access Charge rules, as well as elsewhere, rules establishing a transition period may remain in place even after the transition has been completed. The provisions listed below, are examples of rules that should be eliminated, in whole or in part, for this reason.

36.701 – Lifeline connection assistance expense allocation – general.

51.211 – Toll Dialing Parity Implementation.

51.515(b)-(c) – Application of access charges.

53.101 – Joint marketing of local and long distance services by interLATA carriers.

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[48] FCC Reduces Access Charges by $3.2 Billion; Reductions Total $6.4 Billion Since 1996 Telecommunications Act (CC Docket Nos. 96-262, 94-1, 99-249, and 96-45), *FCC News*, May 31, 2000, at 1.

[49] *Id.*

[50] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service, Sixth Report and Order* in CC Dockets Nos. 96-262 and 94-1, *Report and Order* in CC Docket No. 99-249, *Eleventh Report and Order* in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000)(*CALLS Order*).

[51] Such a proceeding would potentially affect provisions of Parts 51, 61, and 69.

53.201(a)-(b) – Services for which a separate 272 affiliate is required.

54.701(b)-(e) – Administrator of universal service support mechanisms.

64.1320 – Payphone compensation verification and reports.

64.1903(c) – Obligations of all incumbent independent local exchange carriers.

69.116 – Universal service fund.

69.117 – Lifeline assistance.

69.126 – Nonrecurring charges.

69.127 – Transitional equal charge rule.

69.612 – Long term and transitional support.

Other Issues

The USTA Petition and Industry Comments

In preparation for this Report, the staff has met with interested parties to discuss common carrier issues, including the United States Telephone Association (USTA), Competitive Telecommunications Association (CompTel), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), National Telephone Cooperative Association (NTCA), the National Exchange Carrier Association (NECA), Association for Local Telecommunications Services (ALTS) and Cellular Telecommunications Industry Association (CTIA). We have also considered the Petition for Rulemaking filed by USTA in August 1999 addressing 2000 Biennial Regulatory Review issues, and the comments filed in response to it.[52] The ongoing proceedings and proposed initiatives discussed above address many but not all of the major common carrier concerns expressed by USTA. For example, USTA sought numerous additional changes to Part 36 (concerning jurisdictional separations), to Part 32 (governing the Uniform System of Accounts), and to the ARMIS reporting requirements. As discussed above, these matters are being, or will be, addressed by the Commission. USTA also proposed rule changes to Parts 61 and 69. These proposals generally would reorganize and streamline these parts by creating separate rule parts to govern tariff filings, rate-of-return LEC pricing , and price cap LEC pricing. USTA also proposed substantially greater pricing flexibility for incumbent LEC access charges.. The staff does not recommend that the Commission initiate specific new proceedings at this time to address these Part 61 and 69 concerns raised by USTA in the context of this biennial regulatory review. First, many of these issues have been addressed. For example, issues related to price cap LECs were considered in the Coalition for Affordable Local and Long Distance Services (CALLS) proceeding and other proceedings addressing pricing flexibility.[53] In addition, many of the rate-of-return LEC access reform and pricing flexibility issues raised by USTA are the subject of pending proceedings or are scheduled for consideration.

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[52] Petition for Rulemaking of the United States Telephone Association, filed Aug. 11, 1999. The Cincinnati Bell Telephone Company, Roseville Telephone Company and SBC Communications filed comments in response to the USTA petition. The Bell Atlantic Telephone Company, MCI WorldCom, and USTA filed replies.

[53] *CALLS Order*, 15 FCC Rcd 12962.

OPASTCO, NTCA and NECA also raised a number of specific issues for consideration in the context of the 2000 Biennial Regulatory Review. These issues include (1) streamlining accounting, jurisdictional separations and other cost allocation requirements; (2) universal service funding caps; (3) compensation for local number portability services and directory listing information; (4) establishment of a small telecom company federal advisory committee; (5) requirements affecting customer data and billing; (6) avoidance of unnecessary data reporting requirements; (7) average cost schedule review and reporting requirements; (8) elimination of the requirement for annual NECA elections; and (9) implementation of government mandates such as CALEA. The staff recognizes the importance of these issues given the unique circumstances of small telephone companies and the customers they serve. Accordingly, we recommend that the Commission redouble its efforts to ensure appropriate accommodations for small telephone companies. Many of the specific issues raised by OPASTCO and NTCA are currently under consideration by the Commission or are scheduled for consideration. We also recommend that the Commission consider simplifying review of the average schedules and changing the schedule for NECA Board elections. In addition, we note that the Commission will have the opportunity to consider lifting the cap on universal service funding for small companies in the context of the ongoing rural carrier universal service proceeding. We do not recommend that the Commission initiate a new broad based proceeding focused on small telephone company concerns as part of this Biennial Regulatory Review since we believe that such issues can be addressed most expeditiously in other contexts. Similarly, we are reluctant to recommend that the Commission establish a small telecom federal advisory committee, as we believe that this would lead to unnecessary complications and delays in addressing small telephone company concerns. These parties are free, however, to petition for specific rulemakings or to file comments in response to this report.

International Bureau

The International Bureau administers policy for the authorization and regulation of international telecommunications facilities and services, as well as policy for licensing and regulating satellite facilities and services. The Bureau represents the Commission in international fora, as well as in bilateral and multilateral meetings.[54] The Bureau directs and coordinates negotiations with Mexico, Canada and other countries regarding spectrum use and interference protection. The Bureau provides assistance in telecommunications trade negotiations, and provides regulatory assistance and training programs to foreign governments.

The International Bureau seeks to facilitate the introduction of new services, and to provide customers with more choices, more innovative services, and competitive prices. The 2000 Biennial Regulatory Review complements the Bureau's streamlining efforts. The Bureau has taken a proactive approach in its rulemakings to remove unnecessary regulatory constraints, wherever possible and practicable. It continually reviews its rules and policies to respond to changing conditions and developments in the industry.

Scope of Review

The International Bureau reviewed all of the rules that it administers. Specifically, the Bureau reviewed:

Part 1 – Practice and Procedure – In addition to procedural rules of general applicability to all

[54] Major fora include the World Radio Conference and the International Telecommunication Union (ITU), at which the Bureau represents the Commission in matters such as spectrum planning, terrestrial and satellite issues, standards, and broadcasting.

Commission licensees, certain rules within Part 1 explicitly address international telecommunications service providers.

Part 23 – International Fixed Public Radio Communication Services – Contains rules applicable to international terrestrial fixed communications systems, including general licensing and application filing requirements, technical standards, and operations.

Part 25 – Satellite Communications – Contains rules applicable to satellite communications, including general licensing and application filing requirements, technical standards, and operations.

Part 43 – Reports of Communication Common Carriers and Certain Affiliates – Contains rules requiring certain reports by common carriers, including reports regarding different facets of international telecommunications.

Part 63 – Extension of Lines, and Discontinuance, Reduction, Outage and Impairment of Service by Common Carriers; and Grants of Recognized Private Operating Agency Status – Contains rules applicable to common carriers, including application filing requirements for international section 214 authorizations.

Part 64 – Miscellaneous Rules Relating to Common Carriers – Subpart J contains rules regarding the Commission's settlements policy.

Part 73 – Radio Broadcast Services – Subpart F contains rules applicable to international broadcast stations.

Part 100 – Direct Broadcast Satellite Service – Contains rules applicable to direct broadcast satellite service, including technical and operating requirements.

Recent and Ongoing Activities

Satellite Licensing

Part 25 and Part 100 of the Commission's rules form the basis for the Commission's "Open Skies" policy under which a wide range of systems has been licensed to provide satellite services.[55] Through this policy, the Bureau attempts to accommodate the maximum number of systems possible to provide a particular service in order to maximize entry and competition in the satellite service market.

Space Segment Authorization

The Commission has already taken steps to streamline the space segment portion of the satellite licensing process. First, the Commission eliminated section 319(d) waiver procedures to permit companies to begin construction, at their own risk, prior to being licensed.[56] Second, the Commission relaxed the rules governing space station licensee reports. Third, DISCO I eliminated the distinction between U.S.-licensed domestic satellites and international "separate" satellite systems, and the new rules allow satellites to provide both domestic and international services.[57] Fourth, DISCO II adopted a framework to evaluate requests by foreign satellite operators to provide service in the United States.[58] DISCO II also established the "Permitted" List, which

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55 47 C.F.R. Parts 25 and 100.

56 *See Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures, Report and Order*, 11 FCC Rcd 21581 (1996) *Streamlining Order*.

57 *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, and DBS Petition for Declaratory Rulemaking Regarding the Use of Transponders to provide International DBS Service, Report and Order*, 11 FCC Rcd 2429, 2430 (1996) (*DISCO I*).

58 *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, Report and Order*, 12 FCC Rcd 24094 (1997) (*DISCO II*), *recon.*, FCC 99-325

provides another option to non-U.S. satellite operators under which, once placed on the "Permitted Space Station" list, the non-U.S. satellites could provide fixed-satellite service in the United States.

In the direct broadcast satellite (DBS) context, the Commission issued an NPRM, which proposes to consolidate and harmonize the Commission's Satellite rules and eliminate the Commission's separate Part 100 rules for DBS and incorporate the rules into Part 25.

International Satellite Coordination

The International Telecommunication Union (ITU) has established a satellite coordination process to facilitate the harmonious use of satellite orbits and spectrum among Administrations.[59] Satellite coordination occurs by negotiating mutually satisfactory solutions among the affected parties. All space segment licenses that the Commission issues must comply with ITU coordination requirements and international agreements. To eliminate delay of pending international coordination, however, the Commission moves forward with space segment applications and typically approves them before coordination is complete. All authorizations are subject to possible changes that may be necessary to conform to final coordination agreements. This approach saves satellite applicants substantial time. In addition, the Commission has developed processes that allow U.S. satellite operators to negotiate directly with satellite operators of other countries. The Commission reviews and finalizes any operator arrangements before agreeing to them. This process saves staff resources and permits the satellite operators to have some decisional role in the authorization process.

The staff and the industry also are working together to propose solutions to the backlog of coordination filings at the ITU. There is a need to reduce the time it takes for the ITU to process a coordination request because it has a direct effect on the international coordination process and on our licensing process.

Earth Station Licensing

Earth stations are licensed generally for 10 years. The Commission also issues a single blanket license for a large number of technically identical earth stations (*e.g.*, very small aperture terminal earth stations (VSATs), and Satellite News Gathering and mobile earth stations). Less than a year ago, the International Bureau streamlined its processing of certain earth station applications. Specifically, the Bureau instituted an "auto-grant" process that automatically grants routine satellite earth station applications proposing to use the Ku-band fixed-satellite service frequencies (14.0-14.5 GHz / 11.7-12.2 GHz) to communicate with all satellites authorized to provide service to the United States (the "Permitted List").[60] Such routine earth station applications are considered granted 35 days from the date on which the application appears on public notice as "accepted for filing," provided that no objections are filed during the public comment period. These changes were consistent with the increased competition and consumer demand in the satellite marketplace.

The Bureau also reduced the number of emission designators required to be identified in applications for digital systems.[61] This modification significantly reduces the time necessary to

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(rel. Oct. 29, 1999) (*DISCO II First Reconsideration Order*).

[59] Within the ITU, Member States (Administrations/Governments) and Sector Members (private entities) cooperate to maintain and extend telecommunications globally.

[60] *See Commission Launches Earth Station Streamlining Initiative, Public Notice,* DA 99-1259 (June 25, 1999).

[61] Emission designators are a shorthand method used to define the frequency

enter earth station information into the Commission's database, and largely eliminates the need for earth station operators to file modification applications when they wish to add a new emission.

The Commission also modified its Part 25 rules to provide earth station applicants greater flexibility.[62] For example, the Commission simplified rules for license renewals for temporary fixed earth stations and very small aperture terminal earth stations (VSATs). The Commission extended the licensing term for VSATs to 10 years. Additionally, the Bureau created new procedures to allow Special Temporary Authority to be granted readily for use by satellite earth stations if the applicant is able to demonstrate extraordinary circumstances, according to Part 25. Furthermore, the Bureau issued a Public Notice that committed to placing routine applications on public notice within 10 business days of receipt by the Bureau, provided the application includes all required information.[63]

Section 214 Applications

The Commission has taken great strides to streamline its international 214 application processes. In 1996, the Commission created an expedited process for global, facilities-based section 214 applications.[64] The Commission created global section 214 authorizations, reduced paperwork obligations, streamlined tariff requirements for non-dominant international carriers, and ensured that essential information is readily available to all carriers and users. The new regulations facilitated entry into the international telecommunications market and the expansion of international services.

In March 1999, as part of its 1998 Biennial Regulatory Review process, the Commission took additional steps to reduce regulatory burdens on providers of international telecommunications services, citing rapid changes in the global telecommunications market. The Commission streamlined its procedures for granting international section 214 authorizations to provide international services, and increased the categories of applications eligible for streamlined processing.[65] After adoption of the rules, most new carriers are authorized to provide international services on most international routes 14 days after public notice of an application. Carriers already providing service are able to complete *pro forma* transactions and assignments of their authorizations without prior Commission approval and to provide service through their wholly owned subsidiaries without separate Commission approval. Carriers under common ownership with an already-authorized carrier are able to provide the same authorized services after only a minimal waiting period. Authorized carriers are able to use any authorized U.S.-licensed or non-

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bandwidth and the modulation technique and type of service or combination of services.

[62] *See Streamlining Order*, 11 FCC Rcd at 21594-96.

[63] *See* International Bureau to Streamline Satellite and Earth Station Processing, *Public Notice*, Report No. SPB-140, Oct. 28, 1998.

[64] *See Streamlining the International Section 214 Authorization Process and Tariff Requirements, Report and Order*, 11 FCC Rcd 12884 (1996). The Commission had begun the international Section 214 streamlining process in 1985. *See International Competitive Carrier Policies, Report and Order*, 102 FCC 2d 812 (1985); *recon. denied*, 60 RR2d 1435 (1986); *modified, Regulation of International Common Carrier Services, Report and Order*, 7 FCC Rcd 7331 (1992).

[65] *See 1998 Biennial Regulatory Review-Review of International Common Carrier Regulations, Report and Order*, 14 FCC Rcd 4909 (1999) (*1998 International Common Carrier Biennial Regulatory Review Order*), *recon. pending*.

U.S.-licensed undersea cable systems in the provision of their authorized services. Approximately 99 percent of international section 214 applications now qualify for streamlined processing.

Foreign Participation

The Commission has sought to foster an increasingly competitive international telecommunications market by adopting policies that promote the shift away from government-owned monopolies and toward private sector competition. For example, the Commission has simplified its own licensing rules in ways that have facilitated entry into the U.S. market by foreign private sector competitors. In the *Foreign Participation Order*,[66] the Commission broadened the class of foreign-affiliated applicants eligible for streamlined processing. In addition, the competitive conditions created by the World Trade Organization (WTO) basic telecommunications agreement and the rules adopted in the *Foreign Participation Order* significantly reduced the possibility of market distortion, thereby allowing the Commission to reduce scrutiny of many applications and afford those applications streamlined processing.

International Settlements Policy

The Commission has taken action to remove regulatory impediments and increase competition in the international telecommunications marketplace through reform of the longstanding international settlements policy. In 1999, in the *ISP Reform Order*, the Commission adopted sweeping deregulatory inter-carrier settlement arrangements between U.S. carriers and foreign non-dominant carriers on competitive routes.[67] Specifically, the Commission: (1) eliminated the international settlements policy and contract filing requirements for arrangements with foreign carriers that lack market power; (2) eliminated the international settlements policy for arrangements with all carriers on routes where rates to terminate U.S. calls are at least 25 percent lower than the relevant settlement rate benchmark previously adopted by the Commission in its *Settlement Rate Benchmark Order*;[68] (3) adopted changes to contract filing requirements to permit U.S. carriers to file, on a confidential basis, arrangements with foreign carriers with market power on routes where the international settlements policy is removed; (4) adopted procedural changes to simplify accounting rate filing requirements; (5) eliminated the flexibility policy in recognition that the reforms to the international settlements policy render the flexibility policy largely superfluous. The Commission noted that the revisions to its rules will give greater opportunities to smaller carriers and will allow the market, rather than government regulation, to govern settlement arrangements between carriers in competitive markets. These changes promote lower prices and greater innovation in international telecommunications services for U.S. consumers.

Automation

The International Bureau has made substantial progress in its ongoing efforts to automate its processes. For example, the Bureau implemented a computerized notification system, enabling

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66 *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideratio*n, 12 FCC Rcd 23 891 (1997) (*Foreign Participation Order*), *recon. pending*.

67 *See 1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements* (Phase II), *Report and Order and Order on Reconsideration*, 14 FCC Rcd 7963 (1999) (*ISP Reform Order*).

68 *See International Settlement Rates, Report and Order*, 12 FCC Rcd 19806 (1997) (*Benchmarks Order*), *aff'd sub nom. Cable and Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999), *Report and Order on Reconsideration and Order Lifting Stay*, 14 FCC Rcd 9256 (1999) (*Benchmarks Reconsideration Order*).

the ITU and other international entities to provide data to the Commission electronically. In January 2000, the International Bureau successfully completed the transition from a paper and diskette distribution format, the ITU Weekly Information Circular (WIC), to a new computer-based CD-ROM system, the Radiocommunication Bureau International Frequency Information Circular (BRIFIC), for terrestrial service notifications. The BRIFIC system completely replaces our reliance on paper notifications for these services and will save time and resources.

New Initiatives

Earth Station Licensing

The industry has provided substantial constructive comment on the Bureau's processes regarding satellite earth station licensing. The greatest criticism is that the process to obtain an earth station license takes too long. Industry members have suggested a variety of ways to address this problem. Staff recommends that the Commission seek comment on comprehensive changes to the earth station licensing process in a Notice of Proposed Rulemaking. The NPRM would seek comment on the proposals advanced by industry members.

The staff also recommends that the Commission consider requiring electronic filing. Electronic filing eliminates the need for staff to input information into the Bureau's database (which also reduces the chance of typographical errors generated by the staff). The NPRM would also seek comment on various technical changes to Part 25 that could save substantial time in processing applications.

Space Segment Authorizations

Currently it takes the Commission a minimum of just over two years to grant a space station application. The satellite network licensing process takes several years longer when there is no spectrum allocation (International or Domestic), when no service rules exist for the proposed system, or when there are other countries ahead of the United States in the ITU coordination process.

The Bureau's current "processing round" approach requires substantial staff time and resources to resolve all of the issues associated with a particular pool of applications.[69] On the other hand, a processing round approach sets parameters for licensing in an orderly fashion, taking into account mutual exclusivity considerations. Through processing rounds, the Commission is able to identify the name, type and number of applications for a particular service and can avoid considering applications subsequently filed that may be mutually exclusive with previously filed applications.

The major criticism of the current process is that service rulemakings and international coordination take too long to complete. The International Bureau has made concerted efforts to streamline the satellite licensing process. The staff believes that further improvements are warranted. The Bureau is examining new options to improve and streamline the space segment licensing process as it relates to the development of new service rules and international coordination. The Bureau plans to develop specific procedural and substantive proposals for new licensing approaches and establish goals for implementation.

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[69] Where two or more applicants seek licenses for more spectrum than is available, the applications are considered to be mutually exclusive. *See Ashbacker v. FCC,* 326 U.S. 327 (1945). Under *Ashbacker,* where such mutual exclusivity exists, the Commission must conduct a hearing to resolve the conflicting requests.

The Bureau also is continuing to work with the industry to re-examine the entire satellite network licensing process. The International Bureau has convened several meetings with representatives of the U.S. and foreign satellite industry, including geostationary (GSO) companies, non-geostationary (NGSO) companies, direct broadcast satellite (DBS) providers, fixed satellite service (FSS) operators and mobile satellite service providers (MSS), to discuss satellite space station licensing. Input from these industry meetings will be useful in the Bureau's new initiatives.

Parts 23, 25 and 100

The staff recommends that the Commission consider repealing section 25.141[70] and subpart H[71] of its rules. The staff also recommends that the Commission review sections 25.140[72] and 25.144[73] of its rules. Section 25.140 requires that each applicant for a fixed satellite service (FSS) authorization demonstrate that it is legally, financially, technically and otherwise qualified to proceed expeditiously with the construction, launch and/or operation of each proposed space station immediately after the grant of the requested authorization.[74] If the Commission determines that financial qualifications are still necessary, we recommend that the Commission review the rules to determine whether a different showing of financial qualifications may be warranted. We recommend, however, that the Commission retain its technical and legal qualifications in their current form.

Section 25.144 includes the licensing provisions for the 2.3 GHz satellite digital audio radio service (DARS). The staff recommends that the Commission eliminate the subsection in 25.144 that identifies the specific DARS applicants eligible for the auction. This subsection is no longer necessary because DARS licenses have already been issued. The staff recommends, however, that the Commission retain the actual auction procedures for DARS in Part 25.

The staff further recommends that Parts 23 and 100 be retained in their entirety. Part 100 is the subject of a Notice of Proposed Rulemaking, which has already been released by the Commission. Part 23 should be considered by the Commission for further review.

Section 214 Applications

As part of the Telecommunications Division's ongoing efforts to improve service, the Division staff reviewed the rules in Part 63 relating to section 214 authorizations for international communications. In addition, Bureau staff met with industry representatives to solicit suggestions on how to improve the rules. On the basis of this review, and its daily work implementing the rules, the Bureau recommends that the Commission initiate a NPRM to expand the availability of *pro forma* section 214 transfers of control and assignments, which would reduce processing

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70 47 C.F.R. § 25.141. The Commission reallocated radio-determination satellite service (RDSS) spectrum to the Mobile Satellite Service (MSS). Therefore, it appears that the RDSS rules in section 25.141 no longer serve any purpose.

71 47 C.F.R. Subpart H. Subpart H is intended to govern the administration of Section 304 of the Communications Satellite Act of 1962. The ORBIT Act recently signed into law states that Section 304 of the Communications Satellite Act will cease to be effective. Any rule established to administer Section 304 therefore also should be eliminated.

72 47 C.F.R. § 25.140.

73 47 C.F.R. § 25.144.

74 47 C.F.R. § 25.140.

burdens and provide greater regulatory certainty. The Bureau also has identified several duplicative rules that the Commission should consider eliminating, and a number of rules that are unclear, or ambiguous, or contain errors that the Commission should consider modifying.

Submarine Cable

In recent years, there has been an explosive growth in the number and capacity of submarine cables. In particular, the development of the Internet has dramatically increased demand for submarine cable capacity. To address issues relating to increased demand, the rapid pace of technological development, and the emergence of non-traditional ownership and financing structures in the submarine cable marketplace, the International Bureau held a public forum in November 1999.[75] The Bureau also has held numerous meetings with individual industry participants about ways the Commission might reform its regulation of the submarine cable landing licensing process to further promote competition.

On the basis of the public forum and meetings with industry, the Commission recently adopted a Notice of Proposed Rulemaking to continue the Commission's efforts to streamline the submarine cable landing license process.[76] In the Notice, the Commission proposed pro-competitive streamlining that incorporates competitive safeguards to allow for and encourage: (1) more certainty and flexibility for participants in the application process; (2) increased investment and infrastructure development by multiple providers; (3) expansion of available submarine cable capacity; and (4) decreased application processing time. This streamlining effort will benefit U.S. consumers by eliminating regulatory delay and enhancing the competitiveness of U.S. service providers in the world market.

Reporting Requirements

The Bureau staff reviewed the rules in Part 43 relating to reporting requirements of carriers providing international telecommunications services. In addition, Bureau staff met with industry representatives to solicit suggestions on how to improve the reporting requirements. The Bureau recommends that the Commission undertake a proceeding to review the reporting requirements. The staff finds that these reporting requirements can be modified to reflect changes that have occurred in the telecommunications industry. These reports aid the Commission, industry, and international agencies in planning and understanding international telecommunications markets. The staff believes that the reporting burdens can be reduced without eliminating the benefits these reports provide.

The staff recommends that some of the rules relating to reports filed by carriers providing international telecommunications services be modified, and that others be eliminated. The staff has determined that reports regarding the division of international toll communications charges are no longer needed. The purpose of those reports is to monitor telegraph communications, which is no longer a major component of telecommunications. In addition, this reporting requirement is duplicative of other rules. The requirement for reports of carriers owned by foreign telecommunications entities, which is designed to monitor foreign ownership of certain carriers, is no longer necessary in light of the development of competition in international telecommunications markets. Although this reporting requirement has a sunset date, it can be eliminated prior to that sunset. The Bureau also recommends that the instruction manual for reports of International

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[75] *See* International Bureau to Hold Public Forum on Submarine Cable Landing Licenses, *Public Notice*, DA 99-2148, Oct. 8, 1999.

[76] *See Review of Commission Consideration of Applications under the Cable Landing License Act*, *Notice of Proposed Rulemaking*, FCC 00-210, June 22, 2000.

Telecommunications Traffic be revised to reflect all the changes that have occurred over the past several years.

International Broadcasting Stations

International broadcasting stations are broadcast stations operating on certain high frequency bands whose transmissions are intended to be received directly by the general public in foreign countries.[77] The staff reviewed the Commission's rules governing international broadcasting stations[78] and determined that five of these rules should be revised to reflect actions taken at recent World Radio Conferences (WRCs).[79] First, the staff recommends that the Commission modify section 73.701(g) - (j) and (l) of the rules,[80] to reflect the Final Acts of WRC '97 (Geneva), which reduced the number of seasonal schedules per year (and thus the number of times per year that licensees have to file for frequency assignments) from four to two. In addition, the staff recommends that the Commission change the starting and ending dates in the rule to the last Sunday in March and the last Sunday in September, and change the reference month in section 73.701(l) to specify either July or December. Second, the staff recommends that the Commission modify section 73.702(f)(1) of the rules,[81] which lists the frequencies that can be assigned by the Commission for international broadcasting, to include additional bands approved for international broadcasting use by the World Radio Assembly Conference (WRAC) '92.[82] Third, the staff recommends that the Commission replace the target zone map in section 73.703 of the rules[83] with the current ITU target zone map, which was used for implementation of the WRC '97 Final Acts. Fourth, the staff recommends that the Commission change the frequency control tolerance of 0.0015 percent of the assigned frequency, which is specified in section 73.756(c) of the rules,[84] to the current ITU regulation standard of 10 Hz.[85] Finally, the staff recommends that the Commission modify the last sentence of section 73.766 of the rules[86] to change the highest modulating frequency from 5 kHz to 4.5 kHz, to reflect a provision in the Final Acts of WARC-87. These changes would bring the Commission's international broadcasting rules into conformance with current international provisions. This will make the rules easier to use and will avoid the confusion that could result from different Commission and international requirements.

Detariffing International Services

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77 International broadcast stations operate on frequencies between 5950 and 26100 kHz. 47 C.F.R. § 73.701(a). There are both government and non-government international broadcasting stations, and only the latter are licensed by the Commission. *Id*.

78 *See* 47 C.F.R. §§ 73.701-73.788.

79 *See* 47 C.F.R. §§ 73.701-73.788.

80 47 C.F.R. § 73.701(g) - (j) and (l).

81 47 C.F.R. § 73.702(f)(1).

82 The Final Acts of WRAC '92 set January 1, 1996 as the effective implementation date for exclusive use by international broadcasting of the following additional frequency bands: 9775-9900 kHz, 11650-11700 kHz, 11975-12050 kHz, 13600-13800 kHz, 15450-15600 kHz, 17550-17700 kHz and 21750-21850 kHz.

83 47 C.F.R. § 73.703.

84 47 C.F.R. § 73.756(c).

85 Appendix 2 of the ITU Radio Regulations requires international broadcasting station transmitters to meet a frequency control tolerance of 10 Hz for transmitters using double sideband operation.

86 47 C.F.R. § 73.766.

The Commission is in the process of detariffing interstate domestic interexchange services offered by non-dominant interexchange carriers (IXCs).[87] Similar to the domestic interexchange market, the international interexchange market has seen a substantial increase in the level of competition that has benefited consumers. In light of this change, the staff recommends that the Commission extend the detariffing regime adopted for domestic interexchange services to the international services of non-dominant interexchange carriers, including Commercial Mobile Radio Service providers and U.S. carriers classified as dominant solely because of foreign affiliations.[88] Detariffing international interexchange services will reduce the burdens placed on carriers and the Commission. The Commission will still be able to ensure that rates are just and reasonable and not unreasonably discriminatory; will be able to protect consumers by requiring carriers to disclose their rates publicly and through use of the section 208 complaint process;[89] and will promote the public interest by furthering competition in the international interexchange marketplace.

The staff also recommends that the Commission amend, as part of the detariffing process, the rule relating to the filing of contracts between carriers. Specifically, the staff recommends that the Commission amend section 43.51 to simplify the language and to provide that the only contracts that need to be filed with the Commission are (1) contracts with a foreign carrier that has market power in a foreign market for common carrier service between the U.S. and that foreign location and (2) contracts involving a U.S. carrier that has been classified as dominant on any routes included in the contract, except for carriers classified as dominant on a particular route only because of a foreign carrier affiliation.[90] This will reduce burdens on carriers and the Commission. Given the increasing level of competition in telecommunications markets, the staff does not believe that these contracts need to be filed. The Commission and carriers should be able to ascertain when anti-competitive behavior occurs even if the contracts are not filed, and the Commission has authority to obtain the contracts if it needs to review them.

Wireless Telecommunications Bureau

The Wireless Telecommunications Bureau (Wireless Bureau or WTB) is responsible for licensing and regulating all wireless communications services other than broadcast and satellite services. Wireless communications services include commercially provided services such as cellular, Personal Communications Services (PCS), and paging, as well as public safety and other private radio services.

The functions of the Wireless Bureau largely derive from Title III of the Communications Act, which governs licensing of spectrum in general and wireless services in particular. As a result, the vast majority of the Commission's regulations affecting wireless carriers consist of (1) allocation and service rules, (2) procedural rules concerning licensing and auctions, and (3) technical and operational rules.

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87 See *In the Matter of Policy and Rules Concerning the Interstate Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, Report and Order*, 11 FCC Rcd 9564 (1996); *Second Report and Order*, 11 FCC Rcd 20730 (1996), *stay granted, MCI Telecommunications Corp. v. FCC*, No. 96-1459 (D.C. Cir. Feb. 13, 1997); *Order on Reconsideration*, 12 FCC Rcd 15014 (1997); *Second Order on Reconsideration and Erratum*, 14 FCC Rcd 6004 (1999); *stay lifted and aff'd, MCI Worldcom, Inc., et al. v. FCC*, 209 F3d 760 (D.C. Cir. 2000).

88 *See* 47 C.F.R. § 63.10.

89 47 U.S.C. § 208.

90 *See* 47 C.F.R. § 63.10.

The market for wireless carriers has changed dramatically in recent years as a result of entry by new wireless competitors, substantial growth, and increased competition in the wireless market. In 1993, Congress granted authority to the Commission to award wireless licenses by auction.[91] Since that time, the Commission has conducted 30 spectrum auctions for services such as broadband and narrowband PCS, Specialized Mobile Radio (SMR), Wireless Communications Service (WCS), Local Multipoint Distribution Service (LMDS), and numerous other fixed and mobile wireless services.[92] This unprecedented wave of new licensing has resulted in a dramatic increase in the number of competing wireless service providers.[93]

As a result of increased wireless licensing and new competition, the Commission has substantially deregulated many aspects of wireless services. For example, in 1994, pursuant to authority granted under section 332 of the Communications Act, the Commission eliminated all federal rate regulation of commercial mobile radio service (CMRS) providers, and preempted all state rate regulation as well.[94] In 1996, the Commission revised its technical and operational rules to give CMRS carriers flexibility to provide fixed as well as mobile services, so that carriers could better respond to customer demands for new and innovative services.[95] The dynamic and rapidly evolving nature of the wireless industry continues to make it important for the Commission to review its wireless regulations on a regular basis.

Scope of Review

As part of the review process initiated by the 2000 Biennial Regulatory Review Working Group, WTB has reviewed the following rule parts that affect wireless telecommunications carriers.

> Part 1 – Practice and Procedure – In addition to procedural rules of general applicability to all Commission licensees, subpart F relates to licensing and application procedures for wireless services, and subpart Q contains auction rules for wireless services.
> Part 17 – Construction, Marking, and Lighting of Antenna Structures – Establishes construction, marking, and lighting requirements for antenna structures that affect aviation safety, and sets forth procedures for registering such structures with the Commission.
> Part 20 – Commercial Mobile Radio Services – Contains rules that are generally applicable to all CMRS providers, including the CMRS spectrum cap, resale and roaming rules, and E911 requirements.
> Part 22 – Public Mobile Services – Contains licensing, technical, and operational rules for cellular, paging, air-to-ground, and other mobile services.
> Part 24 – Personal Communications Services – Contains auction, licensing, technical, and

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91 Omnibus Budget Reconciliation Act of 1993, Pub. Law No. 103-66, 107 Stat. 312. *See* 47 U.S.C. § 309(j).

92 *See* http://www.fcc.gov/wtb/auctions.

93 See *Fourth Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, 14 FCC Rcd 10145 (1999). *See also Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, FCC 00-289 (adopted Aug. 3, 2000) (*Fifth Competition Report*).

94 *Implementation of Sections 3(n) and 332 of the Communications Act, Second Report and Order*, 9 FCC Rcd 1411 (1994).

95 *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, First Report and Order*, 11 FCC Rcd 8965 (1996).

operational rules for Broadband and Narrowband PCS.
Part 26 – General Wireless Communications Service – Contains auction, licensing, technical, and operational rules for the General Wireless Communications Service (GWCS).
Part 27 – Wireless Communications Service – Contains auction, licensing, technical, and operational rules for the Wireless Communications Service (WCS).
Part 80 – Stations in the Maritime Services – Contains auction, licensing, technical, and operational rules for Public Coast Stations in the marine radio services.
Part 90 – Private Land Mobile Radio Services – Contains auction, licensing, technical, and operational rules for 800 and 900 MHz SMR, private carrier paging, 220 MHz Service, Location and Monitoring Service (LMS), and private land mobile services.
Part 95 – Personal Radio Services – Contains licensing, technical, and operational rules for the 218-219 MHz Service.
Part 101 – Fixed Microwave Services – Contains auction, licensing, technical, and operational rules for private and common carrier fixed microwave services. Includes specific subparts governing LMDS, 24 GHz, and 38-39 GHz services.

Recent and Ongoing Activities

Prior to and contemporaneously with the 2000 Biennial Regulatory Review, WTB has engaged in a number of major initiatives to streamline and eliminate unnecessary rules.

Universal Licensing Proceeding

In the *Universal Licensing* proceeding, which was part of the 1998 Biennial Regulatory Review, the Commission furthered the implementation of the Universal Licensing System (ULS) by consolidating and streamlining its licensing rules and procedures for all wireless services.[96] Major accomplishments in this proceeding include: (1) establishing an electronic filing requirement for all wireless services, which significantly reduces filing burdens on wireless applicants and speeds the licensing process; (2) consolidating all wireless licensing rules into Part 1, by which the Commission eliminated more than 200 duplicative and sometimes inconsistent licensing rules that previously governed applications and licensing in individual wireless services; (3) reducing the number of wireless application forms from more than 40 different application forms in use for different purposes in different wireless services to four standardized application forms; and (4) eliminating obsolete or burdensome application filing rules and procedures, such as the requirement that common carrier licensees file microfiche copies of their applications.

Part 90 Biennial Regulatory Review Proceeding

This proceeding, also initiated as part of the 1998 Biennial Regulatory Review, addresses rules applicable to Part 90 private land mobile licensees.[97] In the *Report and Order* recently adopted in this proceeding, the Commission took the following actions: (1) lengthened license terms for Part 90 licensees from 5 to 10 years, which increases licensee flexibility and reduces

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[96] *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, *Notice of Proposed Rulemaking*, 13 FCC Rcd 9672 (1998); *Report and Order*, 13 FCC Rcd 21027 (1998); *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11145 (1998).

[97] *1998 Biennial Regulatory Review – 47 C.F.R. Part 90 – Private Land Mobile Radio Services*, *Notice of Proposed Rulemaking*, 13 FCC Rcd 21133 (1998); *Report and Order*, FCC 00-235 (rel. July 12, 2000).

filing burdens; (2) extended the construction period for private land mobile licensees from 8 to 12 months; and (3) streamlined, clarified, and eliminated other Part 90 rules.

Amendment of the Commission's Part 97 Amateur Radio Rules

This proceeding simplified licensing classifications in the Amateur Radio Service, streamlined and updated Amateur license examination procedures, and eliminated other outdated rules.[98]

Pro Forma Assignments and Transfers

In 1998, the Commission granted section 10 forbearance of section 310(d), which required prior Commission approval for most *pro forma* assignments and transfers involving wireless telecommunications carriers.[99] This action enables telecommunications carriers to carry out non-substantial transfers and assignments without regulatory delays, subject only to the requirement that they notify the Commission of the change.

Local Number Portability

In 1999, the Commission granted a petition by the Cellular Telecommunications Industry Association to extend the deadline for CMRS providers to establish a local number portability (LNP) capability in their networks.[100] As a result of the Commission's decision to apply section 10 forbearance in this case, the LNP implementation deadline for CMRS providers has been extended until November 2002. This will give CMRS providers greater flexibility in the near term to build out their systems and increase capacity to meet growing consumer demand for wireless services**.**

LMDS Eligibility

In June 2000, the Commission adopted the *Third Report and Order* in CC Docket No. 92-97, in which it allowed the Local Multipoint Distribution Service (LMDS) eligibility restriction to sunset on June 30, 2000.[101] The LMDS eligibility restriction, adopted in 1997, prohibited local exchange carriers and incumbent cable companies from having an attributable interest in any LMDS "A" block license that overlapped with ten percent or more of the population in their service areas. In the *Third Report and Order*, the Commission concluded that allowing this eligibility restriction to sunset would promote the public interest. After reviewing the restriction, the Commission found that the record did not support a conclusion that open eligibility posed a

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98 *1998 Biennial Regulatory Review – Amendment of Part 97 of the Commission's Amateur Service Rules, Notice of Proposed Rulemaking,* 13 FCC Rcd 15798 (1998); *Report and Order,* 15 FCC Rcd 315 (1999).

99 *Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers, Memorandum Opinion and Order*, 13 FCC Rcd 6293 (1998).

100 *Cellular Telecommunications Industry Association's Petition for Forbearance from Commercial Mobile Radio Services Number Portability Obligations, Memorandum Opinion and Order*, 14 FCC Rcd 3092 (1999), *recon.*, 15 FCC Rcd 4727 (2000).

101 *In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 Ghz Frequency Band, to Reallocate the 29.5-30.0 Ghz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-237, *Third Report and Order and Memorandum Opinion and Order*, FCC 00-223 (rel. June 27, 2000).

significant threat of competitive harm in specific markets; indeed, the Commission concluded that open eligibility may improve the availability of services, particularly in rural areas.

Streamlining Initiatives

The Wireless Bureau has engaged in a comprehensive effort to streamline its procedures, to resolve pending applications and requests expeditiously, and to operate more efficiently. Some of the Bureau's more significant accomplishments are:

(1) Deploying the ULS and expanding use of electronic filing. This has resulted in electronic filing of more than 60 percent of wireless applications.
(2) Expanding and expediting the licensing process via auctions. The Bureau has conducted eight auctions since January 1999, in which more than 5,000 licenses have been awarded. The Bureau plans to conduct an additional four auctions during the remainder of this year.
(3) Eliminating the case backlog. Between March 1999 and March 2000, the Bureau reduced by 99 percent a backlog of more than 64,000 applications that had been pending for more than one year, and implemented tracking procedures to prevent future backlogs.
(4) Resolving pending matters quickly. In 1999, the Bureau processed more than 400,000 license applications, issued more than 500 decisions on delegated authority, and had 112 orders adopted by the Commission.
(5) Processing license transfers and assignments efficiently. From October 1999 to April 2000, the Bureau processed approximately 1900 transfer and assignment applications, including such major transactions as AT&T/Vanguard, Bell Atlantic/Vodafone, Nextel/Geotek, Omnipoint/Voicestream, and Arch/PageNet. Seventy percent of the transfer and assignment applications filed with the Bureau were processed in 90 days or less, and 87 percent were processed in 180 days or less.

New Initiatives

In general, the Bureau has not recommended repeal or significant modification of allocation and service rules, procedural rules concerning licensing and auctions, and technical and operational rules, which, as noted above, constitute the majority of the rules subject to review that affect wireless carriers. The staff has determined that these types of rules are integral to the basic licensing and spectrum management functions performed by the Bureau and the Commission under Title III of the Communications Act. The continued need for such rules is not diminished by increased competition in the wireless marketplace. Indeed, without basic "rules of the road" for spectrum use, the ability of wireless carriers to compete would be significantly impaired.

Nevertheless, the Bureau has determined that there are several areas where competitive conditions, technological changes, or administrative efficiency may warrant changing or eliminating regulations. In addition, the Bureau and the Biennial Regulatory Review Working Group have received numerous suggestions from outside parties, such as the Cellular Telecommunications Industry Association (CTIA), the Personal Communications Industry Association (PCIA), and the Federal Communications Bar Association (FCBA), of possible areas for streamlining or eliminating wireless rules.

Part 22 Cellular Rules

The Commission's rules regulating cellular telephone service, contained in Part 22, were largely adopted in the early 1980s when the service was initiated.[102] At the time these rules were adopted, the two cellular carriers in each market (one of which in each market was affiliated with

[102] *See* 47 C.F.R. § 22.900 *et seq.*

the incumbent LEC) were the only providers of mobile telephony, thus creating a "duopoly" market for this service. In addition, those cellular licenses not granted to incumbent LECs were awarded primarily by lottery, which caused the Commission to adopt regulations to prevent speculation and trafficking in licenses. Finally, to ensure technical uniformity in the deployment of cellular, the rules included detailed technical requirements for the provision of analog cellular service. Since these rules were adopted, PCS and SMR providers have entered the mobile telephony market, significantly changing the competitive landscape. The Commission has also replaced the lottery process with licensing by auction, and there have been significant advances in wireless technology, including the development of several competing digital interfaces. As a result of these changes, many of the Part 22 cellular rules adopted in the duopoly era appear to be no longer necessary. Therefore, the Bureau staff recommends initiating a rulemaking to review the cellular rules and consider which of these rules are obsolete as a result of competitive or technological developments. The Bureau staff also recommends review of rules regulating other Part 22 services, such as paging and air-to-ground service, on the same basis.

License Renewal Procedures

In most instances, wireless licenses must be renewed every 10 years. As a practical matter, granting renewal of wireless licenses has proved to be virtually automatic except where the licensee has violated Commission rules, which only occurs in a very small percentage of cases. However, the renewal process in some instances places significant burdens on licensees. In a small but significant number of cases, the Bureau has encountered problems with late-filed renewal applications, in many instances involving public safety licensees that provide essential emergency services to their communities. To address these issues, the staff recommends initiating a proceeding that would consider changes to renewal procedures for public safety licenses in particular and that would review renewal procedures for other wireless licenses as well. Among the options that could be considered are: (1) extending license terms beyond 10 years, and (2) implementing automatic or default renewal procedures to avoid late filing problems. Reform of renewal procedures was an issue specifically raised by CTIA and other industry representatives in meetings with Bureau staff.

Privatization of Microwave Licensing

Under its Part 101 rules, the Commission licenses some private and common carrier microwave services on a site-by-site, frequency-by-frequency basis. Although this licensing procedure facilitates efficient use of the spectrum, the licensing process is administratively complex and resource-intensive for applicants and the Commission. The staff recommends initiating a proceeding that would consider the possibility of partially privatizing the licensing process in these services. If implemented, licensing functions within designated spectrum could be performed by private coordinators, who would also be responsible for maintaining the licensee database.

CMRS Spectrum Cap Review

The CMRS spectrum cap, set forth in section 20.6 of the rules, limits the aggregate amount of broadband PCS, cellular, and SMR spectrum that an entity can hold in any market.[103] The rule was adopted in the CMRS *Third Report and Order* prior to the initiation of broadband PCS licensing.[104] In the September 1999 *Spectrum Cap Report and Order*, the Commission considered whether to retain, modify, or eliminate the spectrum cap.[105] The Commission concluded

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[103] 47 C.F.R. § 22.6.

[104] *Implementation of Sections 3(n) and 332 of the Communications Act, Third Report and Order*, 9 FCC Rcd 7988 (1994).

[105] *1998 Biennial Regulatory Review – Spectrum Aggregation Limits for Wireless*

that the cap continued to serve the public interest by preventing undue concentration in the CMRS market. The Commission also concluded that the cap should be relaxed in some respects, including liberalizing certain of the attribution rules and allowing aggregation of up to 55 MHz of spectrum in rural areas (as opposed to the 45 MHz limit in major markets). Finally, the Commission stated that it would again review the spectrum cap in the 2000 Biennial Regulatory Review. In accordance with this directive, the Bureau plans to prepare a Notice of Proposed Rulemaking for Commission consideration later this year that will initiate this review, taking into consideration existing competitive conditions and technological developments that could affect the continued need for the cap.

Other Issues

The Bureau is also considering several other possible areas for new Biennial Regulatory Review initiatives. For example, the Bureau is reviewing its procedures for environmental clearance of tower sites under the National Environmental Policy Act (NEPA) to determine whether it can implement its responsibilities under NEPA more effectively and efficiently. The Bureau has also received Biennial Regulatory Review suggestions from outside parties such as CTIA and PCIA, including: streamlining procedures for submission of confidential information; streamlining and consolidating reporting obligations applicable to wireless carriers (*e.g.*, TRS, Universal Service, broadband competition, regulatory fees); and reviewing our buildout requirements for different wireless services. The Bureau has taken these suggestions under consideration and will announce further initiatives as appropriate.

SUMMARY OF REVIEW BY MASS MEDIA BUREAU

The Mass Media Bureau advises the Commission in matters pertaining to radio stations, television stations, Multipoint Distribution Service (MDS), Multichannel Multipoint Distribution Service (MMDS), and Instructional Television Fixed Service (ITFS) facilities. The Bureau is responsible for licensing these services and administers Commission rules and policies pertaining to these services, including ownership rules. The Bureau has been engaged in a thorough review of its rules and policies to promote competition and diversity, to minimize unwarranted regulatory burdens, and to streamline our licensing processes. These rules are located in Parts 73, 74, and 21 of Title 47 of the Code of Federal Regulations.

A variety of video outlets currently serve over 100 million television households in the United States.[106] The average television household in the United States can receive 13 over-the-air television stations, while 36 percent of all homes can receive 15 or more stations and 9 percent can receive 20 or more stations.[107] Over 10,400 cable systems pass by 96 million homes and serve almost 67 million television households.[108] Sixty-four percent of all subscribers have at least 54 channels and over 98 percent have a minimum of 30 channels.[109] Other video providers include Direct Broadcast Satellite, MMDS, satellite master antenna television, home satellite dishes, and open video systems.

Telecommunications Carriers, Cellular Telecommunications Industry Association's Petition for Forbearance From the 45 MHz CMRS Spectrum Cap, Report and Order, 15 FCC Rcd 9219 (1999) (*Spectrum Cap Report and Order*).

106 *U.S. Television Household Estimates*, Nielsen Media Research, Sept. 1999.

107 Nielsen Media Research, *Television Audience 1996*, 1997.

108 *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, 15 FCC Rcd 978 (2000), at Appendix B.

109 *Id*. at Table B-4.

Over 12,600 radio stations are currently on the air (4,783 AM, 5,766 commercial FM and 2,066 educational FM).[110] Listeners in over half of the Arbitron radio markets are served by more than 20 commercial radio stations, and listeners in over 90 percent of the markets are served by more than 10 commercial radio stations.[111] The 1996 Act eliminated the Commission's national radio ownership limits and relaxed the local radio ownership limits. In response, the radio industry has consolidated ownership during the past four years, with the number of radio owners declining by approximately 1,100. Thus, there are now approximately 4,000 owners of commercial radio stations. The average number of owners of commercial radio stations in Arbitron radio metro markets has declined by 3 (from 14 to 11) since the 1996 Act. Prior to the 1996 Act, the largest radio group owner had fewer than 40 radio stations nationwide. In March 2000, the two largest radio group owners each had over 440 radio stations, and there were several radio owners with more than 100 radio stations. As a result of this consolidation, approximately two-thirds of all commercial radio stations are owned as part of radio groups.[112]

Commercial broadcasters fund their activities by selling advertisers access to their audiences (they receive no revenue from listeners or viewers).[113] Broadcast programming is limited to the geographic reach of any given station's signal. This creates an incentive for broadcast networks to forge arrangements with many stations, thereby expanding their geographic reach and attracting a broader range of advertisers. Once broadcast television transitions to a digital service, DTV could provide multiple streams of video programming and allow broadcasters to charge subscriber fees for several program services.

Section 202(h) of the 1996 Act requires the Commission to review its ownership rules biennially to "determine whether any of such rules are necessary in the public interest as the result of competition." The Commission has undertaken a number of deregulatory initiatives with respect to the broadcast ownership rules. The Bureau is committed to reevaluating regulatory standards on an ongoing basis to respond to changes in the broadcast industry.

One important policy goal for mass media, and one of the most important purposes of the Commission's multiple ownership rules, is to encourage diversity in the ownership of broadcast stations in order to ensure that a diversity of viewpoints is available over the airwaves.[114] As the

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[110] FCC Press Release, Broadcast Station Totals as of September 30, 1999 (Nov. 22, 1999).

[111] These station counts include all in-market stations and selected out-of-market stations listed in BIA's "Investing in Radio," 1999 Market Report, 4th Edition.

[112] A radio station is generally considered part of a group if the owner has a station in more than one market, or if the owner has three or more stations in one market.

[113] *See Review of the Commission's Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules, Further Notice of Proposed Rulemaking*, 10 FCC Rcd 3535 (1995).

[114] We have previously observed that our ownership rules seek to foster "outlet" and "source" diversity as a means of promoting a diversity of viewpoints. *In the Matter of Review of the Commission's Regulations Governing Television Broadcasting, Further Notice of Proposed Rulemaking*, 10 FCC Rcd 3524, 3549-50, ¶¶ 60-61 (1995). "Outlet" diversity "refers to a variety of delivery services (*e.g.*, broadcast stations) that select and present programming directly to the public." "Source" diversity refers to "a variety of program producers and owners." 10 FCC Rcd at 3549-50, ¶ 61. Both outlet and source diversity are "integral to the ultimate goal of providing the public with a variety of

Supreme Court stated, "it has long been a basic tenet of national communications policy that 'the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.'"[115] This diversity policy is consistent with the First Amendment goal of fostering the "marketplace of ideas"[116] and encouraging "uninhibited, robust, and wide-open" debate.[117] For these reasons, the Supreme Court has stated that it has "no difficulty" in concluding that the Commission's interest in "promoting widespread dissemination of information from a multiplicity of sources" is "an important governmental interest;" indeed, the Supreme Court has stated that "assuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment."[118]

Broadcast stations, particularly television stations, reach large audiences and are the primary source of news and entertainment programming for Americans.[119] Broadcasters consequently play a leading role in airing democratic debate and shaping cultural attitudes. For example, the manner and viewpoint a station uses in presenting the news can have a substantial impact on local elections. A television drama that raises controversial or important societal issues can shape cultural attitudes about these issues in significant ways. There is consequently a vital public interest in ensuring that these influential outlets for communication are in the hands of a broad number of different owners.

The strong policy of promoting diversity is relevant to determining whether a regulation is necessary in the public interest. Whether or not a particular ownership combination has anticompetitive effects in the sale of advertising time or other markets in which broadcasters compete, that combination may reduce the diversity of voices in a community. Congress implicitly recognized this by maintaining local radio ownership limitations, albeit at relaxed levels.[120]

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viewpoints….The Commission has felt that without a diversity of outlets, there would be no real viewpoint diversity – if all programming passed through the same filter, the material and views presented to the public would not be diverse. Similarly, the Commission has felt that without diversity of sources, the variety of views would necessarily be circumscribed." *Id*.

[115] *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 663 (1994) (*Turner I*) (quoting *United States v. Midwest Video Corp*., 406 U.S. 649, 668 n.27 (1972) (plurality opinion) (quoting *Associated Press v. United States*, 326 U.S. 1, 20 (1945)).

[116] This "marketplace of ideas" metaphor was first articulated by Justice Holmes. *See Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).

[117] *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964).

[118] *Turner I*, 512 U.S. at 663.

[119] According to a recent survey, almost 70 percent of adults said they get most of their news from television – almost twice the number that list newspapers as their main news source. *See* "America's Watching," March/April, 1997, Roper Starch Worldwide, Inc.

[120] Congress promotes diversity separate and apart from competition. For example, Section 202(b) of the 1996 Act, which set forth new ownership limitations, is titled "Local Radio *Diversity*." Pub. Law No. 104-104, 110 Stat. 56, 110 (1996) (emphasis added). Moreover, in discussing the radio-television cross-ownership rule, the Conference Report to the 1996 Act noted "the potential for public interest benefits of [radio-television station combinations] *when bedrock diversity interest[s] are not threatened*," and further stated

Congress has repeatedly emphasized its concern for promoting diversity in the mass media, notwithstanding the increasingly competitive nature of virtually all communications markets.[121] In attempting to foster diversity through structural regulation, the Commission endorses a content-neutral method that does not evaluate the substance of any station's editorial decisions, but seeks to ensure a sufficient number of independent outlets and program sources to foster a diversity of independent viewpoints in a given local market.

Recent and Ongoing Activities

On August 6, 1999, the Commission released its *Local Television Ownership Report and Order*[122] and its *National Television Ownership Report and Order*.[123] As discussed more fully below, the Commission, in the *Local Television Ownership Report and Order*, revised its local television ownership rules – the "TV duopoly" rule and the radio-television cross-ownership or "one-to-a-market" rule – to respond to ongoing changes in the broadcast television industry. The new rules reflect a recognition of the growth in the number and variety of media outlets in local markets, as well as significant efficiencies and public service benefits that can be obtained from joint ownership. At the same time, the Commission's amendments reflect its continuing goals of ensuring diversity and localism and guarding against undue concentration of economic power in the marketplace. The newly adopted rules balance these competing concerns and are intended to facilitate further development of competition in the marketplace and to strengthen the potential to serve the public interest. In the *National Television Ownership Report and Order*, the Commission modified its method of calculating stations' audience reach and made some minor changes in which stations would be counted for purposes of the national TV ownership rule.

On June 20, 2000, the Commission released its *1998 Biennial Regulatory Review Report*,[124] which discusses all of the Commission's broadcast ownership rules not already

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that in reviewing this rule the FCC should take into account not only the increased competition facing broadcasters but also "the need for diversity in today's radio marketplace." S. Conf. Rep. 104-230, 104th Cong. 2d Sess. 163 (1996) (emphasis added).

[121] For example, the 1996 Act directs the Commission, in Section 257, in identifying and eliminating market entry barriers for entrepreneurs and other small businesses in certain services, "to promote the policies and purposes of this Act favoring diversity of media voices." 47 U.S.C. § 257(b). Likewise, the Cable Competition and Consumer Protection Act of 1992 sought to "ensure that cable television operators do not have undue market power," and "promote the availability to the public of a diversity of views and information." Cable Television Consumer Protection and Competition Act of 1992, Pub. Law No. 102-385, § 2(b) (1992), 106 Stat. 1460.

[122] *In the Matter of Review of the Commission's Regulations Governing Television Broadcasting; and Television Satellite Stations Review of Policy and Rules*, *Report and Order*, 14 FCC Rcd 12903 (1999) (*1999 Local Television Ownership Report and Order*).

[123] *In the Matter of Broadcast Television National Ownership Rules; Review of the Commission's Regulations Governing Television Broadcasting; and Television Satellite Stations Review of Policy and Rules*, MM Docket Nos. 96-222, 91-221, and 87-8, *Report and Order*, FCC 99-208, Aug. 6, 1999 (*1999 National Television Ownership Report and Order*).

[124] *In the Matter of 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MM Docket No. 98-35, *Biennial Regulatory Review*

considered in the *1999 Local and National Television Ownership Report and Orders*. The *1998 Biennial Regulatory Review Report* considers (1) the local radio ownership rules, including the radio market definition; (2) the daily newspaper/broadcast cross-ownership rule; (3) the national television ownership rule, including the "UHF discount;" (4) the dual network rule; (5) the experimental broadcast station ownership rule; and (6) the cable/television cross-ownership rule. The *Report* then states the Commission's conclusions as to whether the rules remain necessary in the public interest in view of competition.

Broadcast Ownership Rules

Local Radio Ownership Rule

In 1996, the Commission revised the number of radio stations that an entity may own in a single radio market under section 73.3555(a) of its rules in accordance with section 202(b) of the 1996 Act.[125] The Commission also reviewed the rule in its *1998 Biennial Regulatory Review Report*. On the basis of that recently concluded review under the biennial regulatory review requirements of the 1996 Act, the Commission concluded that local radio ownership rules generally continue to serve the pubic interest. Noting that there currently are far fewer licensees competing against each other in many communities than there were prior to the 1996 Act, the *1998 Biennial Regulatory Review Report* concluded that the existing limitations remain necessary to prevent further diminution of competition and diversity in the radio industry.

The Commission, however, recognized that its methodology for counting the number of stations a party owned in a market may have, under certain circumstances, created results that were inconsistent with congressional intent.[126] For example, the Commission noted that its current methodology may result in a station being counted as part of a market but not counted against a licensee's cap on the number of stations it may own in that market. The Commission therefore stated that it will issue a notice of proposed rulemaking seeking comment on its methodology for defining radio markets, counting the number of stations within those markets, and counting the number of stations that a party owns in a radio market.

Local Television Multiple Ownership Rule

Section 73.3555(b) of the Commission's rules limits the number of television stations an entity may own in a single market.[127] The *1999 Local Television Ownership Report and Order* relaxed this rule by (1) modifying the geographic scope from the Grade B contour overlap approach to a Nielsen Designated Market Area (DMA) test that permits common ownership of two television stations in separate DMAs without regard to contour overlap; (2) allowing common ownership of two television stations within the same DMA if their Grade B contours do not overlap (a continuation of the previous rule), or if eight independently-owned, full power and operational TV stations (commercial and non-commercial) will remain post-merger, and one of the stations to be merged is not among the top four-ranked stations in the market, on the basis of audience share at the time the application is filed; and (3) allowing waiver of the new rules under certain circumstances. As the Commission stated in the *1999 Local Television Ownership Report and Order*, the relaxed rules provide measured relaxation of the local television multiple ownership rule, particularly in larger television markets. The rule will allow weaker television stations in a market to combine, either with each other or with a larger station, thereby preserving and

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Report, FCC 00-191, June 20, 2000 (*1998 Biennial Regulatory Review Report*).

[125] 47 C.F.R. § 73.3555(a).

[126] *See, e.g., Pine Bluff Radio, Inc., Memorandum Opinion and Order*, 14 FCC Rcd 6594 (1999).

[127] 47 C.F.R. § 73.3555(b).

strengthening these stations and improving their ability to compete. These station combinations will allow licensees to take advantage of efficiencies and cost savings that can benefit the public. At the same time, the station rank and voice criteria are designed to protect both the Commission's core competition and diversity concerns.[128] Because the local television multiple ownership rule was so recently relaxed, the staff believes that no further changes are warranted at this time. Instead, staff will monitor the effects of deregulatory actions on the marketplace to determine whether further changes are warranted.

Radio-Television Cross-Ownership Rule

Section 73.3555(c) of the Commission's rules limits the number of radio and television stations that an entity may own in a single market.[129] The *1999 Local Television Ownership Report and Order* relaxed the Commission's radio-television cross-ownership rule to allow common ownership of a television station (or two television stations if permitted under our local television ownership rules) and up to six radio stations (any combination of AM or FM stations, to the extent permitted under our local radio ownership rules) in any market where at least 20 independent voices would remain post-merger; a television station and up to four radio stations (any combination of AM or FM stations, to the extent permitted under our local radio ownership rules) in any market where at least 10 independent voices would remain post-merger; and a television station and one radio station (AM or FM) notwithstanding the number of independent voices in the market. The *1999 Local Television Ownership Report and Order* also eliminated the previous five-factor case-by-case waiver standard[130] and established a simplified waiver standard.[131] The Commission stated in the *1999 Local Television Ownership Report and Order* that it relaxed the radio-television cross-ownership rule to balance its traditional diversity and competition concerns with its desire to permit broadcasters and the public to realize the benefits of radio-television common ownership. The relaxed rule recognizes the growth in the number and types of media outlets, the clustering of cable systems in major population centers, the efficiencies inherent in joint ownership and operation of both television and radio stations in the same market, as well as public service benefits that can be obtained from joint operation. The new rule also ensures the application of a clear, reasonable standard. As a result, the rule will ease administrative burdens and will provide predictability to broadcasters in structuring their business transactions.[132] Because the radio-television cross-ownership rule was so recently relaxed, the staff

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128 *1999 Local Television Ownership Report and Order*, 14 FCC Rcd at 12933, ¶ 65.

129 47 C.F.R. § 73.3555(c).

130 *1999 Local Television Ownership Report and Order*, 14 FCC Rcd at 12955-57, ¶¶ 119-22. The five factors were: (1) the potential public service benefits of common ownership of the facilities, such as economies of scale, cost savings, and programming benefits; (2) the types of facilities involved; (3) the number of media outlets already owned by the applicant in the relevant market; (4) any financial difficulties involving the station(s); and (5) issues pertaining to the level of diversity and competition within the affected market.

131 Waivers of the new rule will be granted only in situations involving a failed station, as defined in the Commission's local television multiple ownership rules. The waiver applicant must also show that the in-market buyer is the only entity willing and able to operate the failed station and that the sale to an out-of-market buyer would result in an artificially depressed price for the station. *1999 Local Television Ownership Report and Order*, 14 FCC Rcd at 12948-49, ¶ 101, 12954, ¶ 115.

132 *1999 Local Television Ownership Report and Order*, 14 FCC Rcd at 12948, ¶¶

believes that no further changes are warranted at this time. Staff will monitor the market effects of deregulatory actions to determine whether further changes are warranted.

Daily Newspaper/Broadcast Cross-Ownership Rule

Section 73.3555(d) of the Commission's rules generally prohibits the common ownership of a broadcast station and a daily newspaper in the same community.[133] The Commission reviewed this rule in its *1998 Biennial Regulatory Review Report*. In that review, the Commission recognized that even though media markets have undergone changes since the cross-ownership rule was adopted, many of the new media outlets do not yet appear to be substitutes for newspapers or broadcast stations on the local level, for diversity purposes. The *1998 Biennial Regulatory Review Report* therefore concludes that the rule should, as a general matter, be retained because it furthers the important public policy goal of viewpoint diversity and continues to serve the public interest.

While electing to retain the rule, the Commission recognized that situations may arise where the rule may not be necessary in the public interest to ensure diversity and competition. For example, given the size of the market and the size and type of the newspaper and broadcast station involved, there may be sufficient diversity and competition even if a newspaper/broadcast combination were allowed. The Commission indicated in the *1998 Biennial Regulatory Review Report* that it would examine these types of situations in greater detail. The Commission indicated that it would examine whether the rule needs to be tailored to address contemporary market conditions and would issue a notice of proposed rule making seeking comment on these and other potential modifications of the rule.[134]

On October 1, 1996, the Commission released a *Notice of Inquiry* (NOI) seeking comment on the possible revision of its standards for waiver of the daily newspaper/broadcast cross-ownership rule with respect to newspaper/radio combinations.[135] The *Newspaper/Radio Cross-Ownership Waiver Policy NOI* sought comment on whether the Commission should adopt objective criteria for evaluating these waiver requests and, if so, what those criteria should be. No action has been taken in this proceeding.

National Television Multiple Ownership Rule

Section 73.3555(e) of the Commission's rules prohibits an entity from owning television stations that would result in an aggregate national audience reach exceeding 35 percent.[136] The current cap was established in 1996, when Congress directed the Commission to raise the national cap from 25 percent to 35 percent.[137] The *1999 National Television Ownership Report and Order*

102-03.

[133] 47 C.F.R. § 73.3555(d).

[134] On August 23, 1999, the Newspaper Association of America ("NAA") filed an Emergency Petition for Relief, which argues in favor of repeal of the newspaper/broadcast cross-ownership rule. The NAA petition was treated as a late-filed comment and accordingly not considered in the 1998 Biennial Regulatory Review proceeding. However, the petition will be included in the record of the proceeding that will be initiated to seek comment on this staff Report.

[135] *In the Matter of Newspaper/Radio Cross-Ownership Waiver Policy, Notice of Inquiry*, 11 FCC Rcd 13003 (1996) (*Newspaper/Radio Cross-Ownership Waiver Policy NOI*).

[136] 47 C.F.R. § 73.3555(e)(1).

[137] 1996 Act, § 202(c)(1).

generally clarifies that no market will be counted more than once when calculating the 35 percent cap,[138] and uses DMAs, rather than Arbitron's Areas of Dominant Influence, to define a station's market for the purpose of calculating national audience reach.[139] More recently, the Commission, in its *1998 Biennial Regulatory Review Report,* addressed the issue of whether to modify the 35 percent cap. The Commission determined that its recent changes to the local television ownership rule should be observed and assessed before making any further changes to the national limit. The Commission also found that many group owners have acquired large numbers of stations nationwide since the cap was increased to 35 percent in 1996, and that this trend needed further observation. The *1998 Biennial Regulatory Review Report* therefore did not alter the 35 percent cap.[140]

Section 73.3555(e)(2) provides for a 50 percent "UHF discount" in calculating the national audience reach.[141] Because the UHF discount is intended to recognize the deficiencies in over-the-air UHF reception in comparison to VHF reception, UHF stations are not "credited" with reaching their entire market. The Commission addressed the issue of whether to retain the 50 percent UHF discount in its *1998 Biennial Regulatory Review Report* and concluded that the signal disparity between UHF and VHF has not yet been eliminated. The *1998 Biennial Regulatory Review Report* therefore retains the 50 percent UHF discount. Because the signal disparity should be diminished by digital television, however, the *Report* states that when the transition to digital television is near completion, the Commission will issue a notice of proposed rulemaking proposing a phased-in elimination of the discount.

Dual Network Rule

As mandated by the 1996 Act, section 73.658(g) of the Commission's rules permits a broadcast station to affiliate with a network organization that maintains more than one broadcast network, unless the dual or multiple networks are created by a merger between ABC, CBS, Fox, or NBC, or a merger between one of these four established networks and UPN or WB.[142] The Commission reviewed this rule in its *1998 Biennial Regulatory Review Report*. The Commission recognized that the rule, as it applies to UPN and WB, may no longer be necessary in the public interest. The Commission stated that the opportunity for broadcast networks to create and maintain multiple broadcast networks may place networks on more equal footing with cable, satellite, and other multi-channel video programming distributors. The Commission further noted

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138 On November 18, 1999, Fox Television Stations, Inc. filed an "Emergency Petition for Relief and Supplemental Comments" in the 1998 Biennial Regulatory Review proceeding seeking, among other things, repeal of the national broadcast ownership rule. In addition, on November 19, 1999, Viacom, Inc. filed comments in that proceeding seeking repeal of the same rule and the dual network rule. The Fox and Viacom filings were not considered in the 1998 Biennial Regulatory Review proceeding because they were untimely filed. *1998 Biennial Regulatory Review Report*, n.76. They will be included, however, in the record of the proceeding that will be initiated to seek comment on this staff Report.

139 *National Television Ownership Report and Order*, at ¶ 35.

140 *1998 Biennial Regulatory Review Report*, ¶¶ 25-30.

141 47 C.F.R. § 73.3555(e)(2). Section 73.3555(e)(2) explains that "national audience reach" is based on the number of television households in DMAs, and that UHF television stations are credited with reaching only 50 percent of the television households in the DMA.

142 47 C.F.R. § 73.658(g).

that because the emerging networks (UPN and WB) are nascent subsidiaries of large program producers, their merger with a major network (ABC, CBS, Fox or NBC) may permit realization of substantial economic efficiencies without undue harm to diversity and competition. The Commission has issued a notice of proposed rulemaking to consider eliminating the restriction on the ownership of UPN or WB by one of the four established networks and seeking comment on what, if any, safeguards should be imposed.[143] The Commission, however, declined to eliminate the prohibition against any mergers of the four major networks because of significant concerns about competition and diversity.

Experimental Broadcast Station Multiple Ownership Rule

Section 74.134 of the Commission's rules prohibits any person from controlling two or more experimental broadcast stations unless it can show that the research program requires the licensing of two or more separate stations.[144] The Commission reviewed this rule in its *1998 Biennial Regulatory Review Report* and concluded that elimination of the rule would not adversely affect diversity and competition. The Commission stated that other rules, which require experimental stations to operate for research purposes and bar them from imposing charges for transmitting programming and from offering a regular program service, provide sufficient safeguards against use of experimental stations for commercial purposes. The Commission has issued a Notice of Proposed Rulemaking proposing to eliminate the rule.[145]

Cable/Television Cross-Ownership Rule

Section 76.501(a) of the Commission's rules prohibits a cable system from carrying the signal of a television station if the system owns or controls a TV station whose predicted Grade B contour overlaps the service area of the cable system.[146] The Commission reviewed this rule in its *1998 Biennial Regulatory Review Report* and concluded that the cable/television cross-ownership rule promotes competition in the delivered video programming market. The Commission noted that, despite an array of participants in the delivered video programming market, 67 percent of television households subscribe to cable. The Commission also noted that this rule prevents other forms of discrimination that could degrade competition in the delivered video programming market. The *1998 Biennial Regulatory Review Report* therefore retains the rule. The staff does not find any reason to alter that decision.

Other Rules

Broadcast Attribution Report and Order

The *1999 Attribution Report and Order* amended Note 2 to section 73.3555 of the Commission's rules, the broadcast attribution rules, which determines what interests should be counted in applying the ownership rules.[147] The *1999 Attribution Report and Order* amended the

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143 *In the Matter of Amendment of Section 73.658(g) of the Commission's Rules – The Dual Network Rule,* MM Docket No. 00-108, *Notice of Proposed Rule Making*, FCC 00-213, June 20, 2000.

144 47 C.F.R. § 74.134.

145 *In the Matter of Elimination of Experimental Broadcast Ownership Restrictions,* MM Docket No. 00-105, *Notice of Proposed Rule Making*, FCC 00-203, June 20, 2000.

146 47 C.F.R. § 76.501(a).

147 *In the Matter of Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests; Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry; and Reexamination of the Commission's Cross-Interest Policy*, *Report and Order,* 14 FCC Rcd 12559 (1999) (*1999*

attribution rules to improve their precision, avoid disruption in the flow of capital to broadcasting, afford clarity and certainty to regulatees and markets, and facilitate application processing. A number of measures were adopted in the *1999 Attribution Report and Order*. In particular, the *Order* eliminated the cross-interest policy, which had required a time-consuming case-by-case review, and adopted instead a new equity/debt plus rule that addressed some of the same concerns. In addition, the Commission raised the passive investor voting stock benchmark from 10 to 20 percent. The *1999 Attribution Report and Order* also conformed the cable/Multipoint Distribution Service attribution rules to the newly adopted broadcast attribution criteria and amended the attribution rules regarding cable/television cross-ownership and the ITFS cross-leasing rules.

Main Studio and Public File Report and Order

The *Main Studio and Public File Rules Report and Order* provided broadcasters greater flexibility in choosing where to locate their main studios, required commercial and noncommercial educational stations to locate the public files at their main studio, and allowed licensees to maintain all or part of the files in a computer database, rather than in paper files.[148] The *Main Studio and Public File Rules Report and Order* further clarified what must be contained in the public inspection files. The Commission's goals in amending these rules was to strike an appropriate balance between ensuring that the public has reasonable access to each station's main studio and public file, minimizing regulatory burdens on licensees, and establishing rules that are easy to administer and understand.

Call Sign Report and Order

The *Call Sign Report and Order* amended several rules to ease and speed call sign request processing.[149] Specifically, the *Call Sign Report and Order* amended the Commission's rules to replace the requirement that parties file written requests for the registration or change of call signs with a new on-line call sign inquiry, reservation, and authorization system that is accessible through the Internet.[150] The Commission further amended its low-power television station identification rules to allow low-power television permittees and licensees to be assigned four-letter call signs, *via* the Internet on-line process, in lieu of five-character alphanumeric call signs.[151] These revised rules will streamline the Commission's call sign assignment procedures. Implementation of the on-line system enhances the speed and certainty of radio and television broadcast station call sign assignments, thereby providing better service to all broadcast station licensees and permittees.

Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses

The Commission traditionally used comparative hearings to decide among mutually exclusive applications to provide commercial broadcast service, and it has used a system of

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Attribution Report and Order).

148 *In the Matter of Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations, Report and Order*, 13 FCC Rcd 15691 (1998), *revised in part on reconsideration*, 14 FCC Rcd 11113 (1999) (*Main Studio and Public File Rules Report and Order*). *See also* 47 C.F.R. §§ 73.1125; 73.3526 and 73.3527.

149 *In the Matter of 1998 Biennial Regulatory Review – Amendment of Parts 73 and 74 Relating to Call Sign Assignments for Broadcast Stations, Report and Order*, 14 FCC Rcd 1235 (1998) (*Call Sign Report and Order*).

150 47 C.F.R. § 73.3550.

151 47 C.F.R. § 74.783.

random selection to award certain types of broadcast licenses, such as low-power television and television translator licenses. As a result of the Balanced Budget Act of 1997, which expanded the Commission's competitive bidding authority under section 309(j) of the Communications Act, as amended,[152] the Commission no longer has the option of resolving competing applications for commercial broadcast stations by comparative hearings, except for certain applications filed before July 1, 1997. In addition, the Balanced Budget Act removed the Commission's authority to resolve competing applications for commercial broadcast stations by a system of random selection. In response to these legislative changes, the *Competitive Bidding First Report and Order*[153] adopted new competitive bidding rules to select among mutually exclusive applications for new commercial full-power radio station licenses, analog television station licenses, and a variety of secondary commercial broadcast service licenses (low-power television, FM translator, and television translator services).[154] In contrast to the comparative hearing process, the competitive bidding rules provide a more streamlined method for awarding authorizations, and, as a result, expedite service to the public.

1998 Nontechnical Streamlining Report and Order

The Commission recently concluded a review of its broadcast rules and application procedures. The *Nontechnical Streamlining Report and Order* made fundamental changes in the Commission's broadcast application and licensing procedures to reduce unwarranted applicant and licensee burdens, while preserving the public's ability to participate fully in the broadcast licensing process.[155] The Commission extended the construction period for all broadcast stations to three years (from 18 months for radio stations and 24 months for television stations), but tightened standards for granting extensions. With respect to the procedures for transfer and assignment applications, the Commission eliminated the prohibition on for-profit sales of unbuilt stations.[156] In addition, applicants now certify that their sales and organizational documents comply with Commission policy and rules.[157] Similarly, staff no longer routinely reviews contour overlap maps;

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[152] Pub. Law No. 105-33, 111 Stat. 251 (1997).

[153] *In the Matter of Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses; Reexamination of the Policy Statement on Comparative Broadcast Hearings; and Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases, First Report and Order*, 13 FCC Rcd 15920 (1998), *on reconsideration*, 14 FCC Rcd 8724, *on further reconsideration*, 14 FCC Rcd 12541 (1999).

[154] While concluding in the Report and Order that the channels reserved for ITFS were not exempt from competitive bidding, the Commission announced that, given the instructional nature of the ITFS service and the long-standing reservation of the ITFS spectrum for noncommercial educational use, it would request Congress to clarify whether it intended the Commission's expanded auction authority to include ITFS. *First Report and Order*, 13 FCC Rcd at 15999-16002.

[155] *In the Matter of 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Report and Order*, 13 FCC Rcd 23056 (1998), *on reconsideration*, 14 FCC Rcd 17525 (1999) (*1998 Nontechnical Streamlining Report and Order*).

[156] 47 C.F.R. § 73.3597.

[157] While copies of sales agreements are no longer required as part of the application

applicants now certify compliance with multiple ownership rules.[158] In addition, broadcast licensees now file ownership reports every two years, rather than yearly. The *Nontechnical Streamlining Report and Order* also applied the two-year ownership report filing requirement to noncommercial educational broadcasters and eliminated the requirement that a noncommercial educational licensee file an ownership report within 30 days after any change in previously reported information.[159] Both commercial and noncommercial educational licensees, however, must file a new ownership report within 30 days of consummating authorized license assignments or transfers of control of licensee entities.

In addition to streamlining the application procedures, the Commission adopted new certification-based application procedures and mandatory electronic filing rules for fifteen key Mass Media Bureau broadcast application and reporting forms. These changes are designed to make filings easier, faster, and more resistant to error. For example, electronic filing automatically notifies applicants of any critical errors in their applications, and allows the public to view the applications on the Commission's web site. When fully implemented, these reforms will significantly reduce burdens on applicants and Commission staff, facilitate application processing, and result in more accurate databases and easier public access to information. Electronic submission furthers the Commission's long-standing commitment to using new information technologies for enhancing service to licensees and to the public. On April 28, 2000, the Mass Media Bureau implemented electronic filing procedures for six broadcast application forms. Electronic filing of these forms will become mandatory in October 2000.

1999 Technical Streamlining Report and Order

On June 15, 1998, the Commission released a notice of proposed rulemaking seeking comment on streamlining AM and FM, noncommercial educational (NCE) FM, and FM translator technical rules.[160] The Commission addressed many of the proposals from the *Technical Streamlining Notice* in the *1999 Technical Streamlining First Report and Order*.[161] The *1999 Technical Streamlining First Report and Order* in this proceeding extended first-come, first-served processing to applications for minor changes to AM, NCE FM, and FM translator

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for assignment or transfer, the documents must still be filed for the purpose of making the contracts and agreements available to the public in the Commission's public reference room.

[158] While copies of contour overlap maps are no longer required as an exhibit to the application, the maps must still be filed for the purpose of making the maps available to the public in the Commission's public reference room.

[159] 47 C.F.R. § 73.3615.

[160] *In the Matter of 1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, Notice of Proposed Rulemaking and Order*, 13 FCC Rcd 14849 (1998) (*Technical Streamlining Notice*)

[161] *In the Matter of 1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, First Report and Order*, 14 FCC Rcd 5272 (1999) (*1999 Technical Streamlining First Report and Order*). The proposals upon which the Commission has not yet acted pertain to whether the Commission should allow negotiated interference agreements between or among FM broadcast stations to accept new or increased interference in connection with substantial facilities improvements. *Technical Streamlining Notice*, 13 FCC Rcd at 14857-63, ¶¶ 17-27.

facilities.[162] The *1999 Technical Streamlining First Report and Order* also expanded the definition of "minor change" in these services to conform more closely to the commercial FM definition. The expanded "minor" change application definition permits expeditious processing of most facility modifications under our efficient and proven first-come, first-served rules. Finally, the *1999 Technical Streamlining First Report and Order* amended the Commission's contingent application rule, which had prohibited the filing of coordinated facility modifications. The revised rule permits the simultaneous filing of up to four "related" minor change FM station construction permit applications.[163]

New Initiatives

The Commission has significantly reduced the burdens of its mass media rules and policies over the past few years. Bureau staff is in the process of reviewing petitions for reconsideration of the rules the Commission adopted in the *1999 Local and National Television Reports and Orders* as well as the *1999 Attribution Report and Order*. Moreover, the Bureau is initiating several rulemaking proceedings, as described above, that are based on the Commission's findings in its *1998 Biennial Regulatory Review Report* on the mass media ownership rules.

SUMMARY OF REVIEWS BY OTHER BUREAUS AND OFFICES

Cable Services Bureau

The Cable Services Bureau advises the Commission in matters pertaining to the regulation and development of cable television and other multichannel video programming services. The Bureau administers rules and policies regarding cable television service and systems, including, for example, ownership of cable systems; promotion of competition; pole attachment issues; the preemption of restrictions on devices designed for over-the-air television broadcast signals, and the accessibility of video programming to persons with disabilities.

Section 11 and section 202(h) of the 1996 Act do not specifically refer to cable operators and cable regulation. The Bureau does administer section 224 of the Communications Act and the Commission's rules for pole attachments (Part I, subpart J), which provide cable operators and telecommunications providers with nondiscriminatory access to a utility's poles, ducts, conduits, and right of ways (see section XV below).The Bureau's review of the rules it administers, however, is consistent with the general spirit and purpose of section 11, which directs the Commission to review and repeal or modify regulations applicable to providers of telecommunications services that are determined to be no longer necessary in the public interest.

Recent and Ongoing Activities

Effective Competition Orders

Under the 1992 Cable Act and the Commission's implementing rules, only cable systems that are *not* subject to effective competition may be regulated under the cable rate rules.[164] Cable systems that are subject to effective competition are not rate regulated. A cable operator that believes that it should not be subjected to the cable rate rules must file a petition with the

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162 47 C.F.R. §§ 73.3571, 73.3573, and 74.1233.

163 47 C.F.R. § 73.3517. Two applications are "related" if the grant of one is necessary to permit the grant of the second application. Thus, the "lead" application in a group typically will not be "contingent" on any other application, but nevertheless will be counted as a "related" application. *1999 Technical Streamlining Report and Order*, 14 FCC Rcd at 5282 n.43.

164 47 U.S.C. § 623(a)(2); 47 C.F.R. § 76.905 (a).

Commission showing that it is subject to effective competition in its franchise area.[165] Since 1992, the Cable Services Bureau has addressed over 200 effective competition petitions.

Satellite Home Viewer Improvement Act

Recent amendments to the Satellite Home Viewer Improvement Act (SHVIA) give consumers more choices in how they receive broadcast stations at home.[166] Most significantly, the amendments give satellite carriers the right to retransmit local stations back into local markets. The legislation directs the Commission to conduct numerous rulemakings and inquiries within one year, including retransmission consent and must carry requirements for satellite carriers; network non-duplication; sports blackout and syndicated exclusivity; improvement of predictive models; enforcement procedures; designation of signal testers and an inquiry into signal standards.[167] The Commission has already issued five Orders, four Notices of Proposed Rulemaking and a Notice of Inquiry addressing SHVIA requirements. The Cable Services Bureau continues work on additional SHVIA requirements.

Horizontal Ownership

Section 613 (f)(1)(A) of the Communications Act requires the Commission to "prescribe rules and regulations establishing reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such a person, or in which such a person has an attributable interest."[168] The rules adopted by the Commission in response to 613(f)(1)(A) are known as the horizontal ownership rules.[169]

The *Third Report and Order* adopted by the Commission in October 1999, *inter alia*, permits cable operators to have no more than a 30 percent share of nationwide multichannel video programming distributor (MVPD) subscribers. The United States Court of Appeals for the District of Columbia Circuit recently upheld the constitutionality of section 613(f)(1)(A).[170] A petition for reconsideration of the *Third Report and Order* was filed on January 3, 2000. A decision on the petition is pending. In addition, several cable operators filed petitions for review of the *Third Report and Order* with the United States Court of Appeals for the District of Columbia Circuit. These petitions are pending.

Mandatory Carriage of Digital Television Signals

Local television stations receive access to a cable operator's cable system either through request, as with must carry, or through negotiation, as with retransmission consent. Sections 614 and 615 of the Communications Act contain the must carry requirements for commercial and noncommercial television stations, respectively. Commercial television stations may invoke mandatory carriage rights within their local market areas. Noncommercial television stations are considered qualified, and may invoke such rights if they (1) are licensed to a community within fifty miles of the principal headend of the cable system; or (2) place a Grade B contour over the cable operator's principal headend. Low power television stations have rights to invoke mandatory

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165 47 C.F.R. § 76.907.

166 *The Satellite Home Improvement Act of 1999* (SHVIA), Title I of the Intellectual Property and Communications Omnibus Reform Act of 1999 (IPACORA), Pub. Law No. 106-113, 113 Stat. 1501.

167 *Id.*

168 47 U.S.C.§ 533.

169 47 C.F.R § 76.503.

170 *Time Warner Entertainment Co., L.P. v. United States of America*, 211 F.3d 1313 (D.C. Cir. 2000).

carriage if they meet six qualifying statutory criteria; however, a cable operator cannot carry a low power station in lieu of a full power station.

The Communications Act of 1934, as amended by the 1992 Cable Act, instructs the Commission to commence a proceeding to determine whether changes in the mandatory carriage rules are necessary to accommodate advances in television broadcast signal standards, such as the advent of digital broadcast television signals on cable television systems.[171] In 1995 and 1996, the Commission received comments on digital television signal carriages issues from broadcasters, cable operators, cable programmers, equipment manufacturers, public interest groups and other interested parties in response to questions posed in the *Fourth Further Notice of Proposed Rulemaking* in MM Docket 87-268. To refresh the record and reflect recent changes in technology, policy and law, the Commission released a new Notice of Proposed Rulemaking in July 1998 asking for new and updated information and arguments.[172]

Navigation Devices

Navigation devices are television set-top boxes, converter boxes, interactive communications equipment, and other equipment that a consumer uses to access video programming. The devices are most commonly recognized as the boxes on top of many televisions that are used to access cable television. Section 629 of the 1996 Act requires the Commission to assure that navigation devices used in conjunction with multi channel programming distribution are commercially available from sources other than cable operators, *e.g.*, made available to consumers through retail stores. The Commission's rules relating to navigation devices are located at 47 C.F.R. §§ 76.1200-1210. In May 1999, the Commission adopted an *Order on Reconsideration* that exempted, as of July 1, 2000, equipment that performs analog-only conditional access from the requirement that multi-channel video programming distributors separate the security function from non-security functions.[173] The Commission did not think it worthwhile for the industry to construct a separate analog security module that will soon be obsolete because of the industry's transition from analog to digital programming. The rules adopted were upheld on appeal by the United States Court of Appeals for the District of Columbia Circuit.[174]

Inside Wiring

In October 1997, the Commission adopted a Report and Order and Second Further Notice of Proposed Rulemaking that amended its cable inside wiring rules to enhance competition in the video distribution marketplace.[175]

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171 47 U.S.C. § 534 (b)(4)(B).

172 *Carriage of the Transmissions of Digital Television Broadcast Stations, Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 13 FCC Rcd 15092 (1998)

173 *Commercial Availability of Competitive Navigation Devices, Order on Reconsideration*, 14 FCC Rcd 7596 (1999).

174 *General Instrument Corp. v. FCC*, 213 F.3d 724 (D.C. Cir., June 6, 2000)

175 *Telecommunications Services Inside Wiring: Customer Premises Equipment, and Implementation and Competition Act of 1992: Cable Home Wiring, Report and Order and Second Notice of Proposed Rulemaking,* 13 FCC Rcd 3659 (1997). The Commission is currently reviewing the petitions for reconsideration and comments filed in this proceeding.

The Report and Order was intended to provide opportunities for new entrants seeking to compete in distributing video programming, particularly multi-channel video programming distributors seeking to provide service in multi-dwelling unit buildings (MDUs). Specifically, the Commission's rules establish procedures for the disposition of cable "home run" wiring where the incumbent MVPD no longer has a legally enforceable right to remain in the building.[176] The Second Further Notice seeks comment on the benefits or disadvantages of exclusive contracts in promoting a competitive environment, and whether there are circumstances where the Commission should adopt restrictions on exclusive contracts in order to further promote competition in the MDU marketplace.[177]

New Initiatives

The Cable Services Bureau's review of the existing rules and procedures suggests a number of areas that should benefit from further review. First, the Bureau has suggested and the Commission has adopted a proposal to revise the rules governing the filing of applications and forms to facilitate electronic filing. The Cable Operations and Licensing System (COALS), a new electronic filing system, should significantly enhance availability of cable system information to the cable industry and the public, and reduce the cost of filing applications and obtaining information.[178]

The Cable Services Bureau also recommends that the Commission conduct a general review of the rules to eliminate specific sections that are no longer relevant or correct in light of judicial decisions or the elimination of certain statutory requirements. Included in this category of changes would be: (1) the elimination of those portions of the rate rules pertaining to cable programming services tier (non-basic) rates which, pursuant to section 623(c)(4), sunset on April 1, 1999; (2) elimination of the rules based on section 505 of the 1996 Act, including section 76.227, relating to incompletely scrambled sexually-oriented programming that were found to be unconstitutional by the recent Supreme Court decision in *United States v. Playboy Entertainment Group, Inc*., No. 96-1682 (decided May 22, 2000);[179] and (3) deletion of section 76.209, applying the fairness doctrine to cablecast programming.

As part of the Biennial Regulatory Review Process, the Cable Services Bureau met with several attorneys who work with cable issues and other industry representatives. In these meetings, the Bureau staff sought to obtain an outside perspective as to how the cable rules could be modified to serve the public better as competition in the industry develops. As a result of these discussions, the bureau will be considering other changes to the rules, including in particular changes in the remaining rate rules on the basic service tier to make sure that the process continues to function properly and efficiently after elimination of cable programming service tier regulation.

Consumer Information Bureau

The Consumer Information Bureau (CIB), which was created in November 1999 along with the new Enforcement Bureau, was established to provide easy access to information about communications services, as well as to serve as a consumer and disability rights voice at the

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176 13 FCC Rcd 3680.

177 13 FCC Rcd at 3778.

178 *Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System*, CSB Docket 00-78, *Notice of Proposed Rule Making*, FCC 00-165, May 23, 2000.

179 The Supreme Court concluded that section 505 of the 1996 Act, which provides statutory authority for 47 C.F.R. § 76.227, violates the First Amendment.

Commission. CIB's creation consolidated consumer information and complaint processing responsibilities from multiple bureaus, thus eliminating duplication of services and providing consumers with a single point of contact with the FCC.

A key priority of CIB is to help ensure that information is readily available, because competitive markets work best when consumers have the information required to make informed choices. CIB develops, recommends, coordinates and administers the Commission's consumer information program to enhance the public's understanding of the Commission's policies, goals, objectives, and regulatory requirements. This serves to facilitate public participation in the Commission's proceedings.

CIB's Reference Information Center (RIC) is the official Commission custodian for designated records, and handles the intake processing, organization and maintenance, reference services, retirement, and retrieval of these records. It provides a convenient one-stop shop for its clients, including industry, attorneys, academic researchers and consumers, to research and obtain relevant and available information. RIC is also responsible for managing and maintaining the Electronic Comment Filing System. This system, which allows comments to be filed with the Commission remotely, facilitates public participation in Commission proceedings.

CIB has two consumer centers, one in Gettysburg, Pennsylvania, the other located at the FCC's Portals headquarters. These centers, which comprise the Consumer Information Network Division (CIND), respond to over 100,000 consumer inquiries each year, and process and serve informal complaints.

CIB's Strategic Information Office (SIO) is charged with collecting and analyzing information received in the bureau from incoming consumer complaints and inquiries, consumer fora, and other industry sources. This allows SIO to serve as an early warning system to the Commission about consumer trends.

Finally, CIB also contains the Disability Rights Office (DRO). DRO advises other Bureaus and Offices on rulemakings and other proceedings. It also helps consumers resolve disability complaints, and works with industry and other entities to facilitate the provision of accessible services and equipment.

Recent and Ongoing Activities

CIB's Consumer Education Office (CEO) furthers the Bureau's mission to educate the public about important Commission regulatory programs, through consumer and industry fora and workshops. CEO held a workshop to facilitate discussions between industry groups, state agencies, and consumer groups to make billing practices more consumer friendly.[180] It has also published a guidebook on how consumers can participate in Commission proceedings, and consumer education pamphlets on selecting the right telephone service plan, and how to understand long-distance and dial-around advertising.[181]

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[180] *See* FCC and NARUC to Host Consumer Friendly Billing Workshop on March 29, 2000, *Public Notice*, DA 00-558, Mar. 29, 2000. This forum was co-sponsored by the National Association of Regulatory Utility Commissioners (NARUC).

[181] *See* http://www.fcc.gov/marketsense. This pamphlet is also available by contacting the FCC.

In conjunction with other Commission bureaus and offices, CEO continues to develop consumer alerts, education campaigns and public service announcements to give consumers information about their rights and information so that they can protect themselves against unscrupulous practices. CEO also held a forum on customer service,[182] featuring bureau staff, staff regulators, consumer and community representatives, and customer service experts. The forum was accompanied by a consumer education pamphlet on navigating customer service systems. The Bureau is also planning a forum on the consumer perspective in a detariffed long distance market.[183]

CIB staff is working on the Commission's tribal initiatives to address the problem of limited availability of basic and advanced services in many tribal regions, and to ensure that basic and advanced telecommunications services are made available in those geographical areas. CIB will continue to work on other outreach initiatives to underserved communities.

These non-regulatory initiatives will educate consumers so that they can make better, more informed choices about telecommunications services, and more fully enjoy the fruits of competitive markets.

New Initiatives

The staff recommends that the Commission consider reviewing its informal complaint rules, 47 C.F.R. 1.716-718. The rules do not specify the documentation consumers must file with the Commission to complete their complaints, leading to repetitive filings from consumers, particularly if the primary filing lacks sufficient information to resolve the informal complaint. The rules also do not prescribe a specific time frame for carriers to respond to an informal complaint. If consumers have not received a response to an informal complaint in a specific period of time, consumers may file duplicative formal complaints. Such complaints are costly to consumers and carriers, and may require unnecessary expenditure of Commission resources. Finally, these rules traditionally have applied to informal wireline complaints, while other complaints have been handled in a less structured manner. This has led to a lack of predictability for consumers in filing complaints, and industry in receiving complaints. Staff recommends reviewing these rules, to determine whether their scope should be expanded to cover all informal complaints.

DRO advises other bureaus and offices on compliance with section 255 of the 1996 Act, which mandates access to telecommunications services for Americans with disabilities, as well as other substantive proceedings addressing disability issues. For example, DRO worked closely with the Common Carrier Bureau on drafting new rules relating to Telephone Relay Services (TRS). These new rules require that speech-to-speech relay service be provided, and also encourage competition in the video relay market by making that service eligible for reimbursement from the TRS fund.[184] DRO intends to initiate rulemakings in the future on appropriate issues in order to fulfill its mandate. Staff has also worked with the Wireless Telecommunications Bureau on the

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[182] *See* FCC to Hold Telephone Customer Service Public Forum, *Public Notice*, DA-1209, June 1, 2000.

[183] *See* Domestic Interexchange Carriers Detariffing Order Takes Effect; Common Carrier Bureau Implements Nine-Month Transition Period; Comment Sought on Modifications to Transition Plan, *Public Notice*, DA 00-1028, May 9, 2000.

[184] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order*, 15 FCC Rcd 5140.

Commission's E-911 rules to ensure that these public safety rules are accessible to Americans with disabilities.

DRO also conducts public outreach and education on disability issues. It works closely with the public to ensure that individuals with disabilities are aware of their rights, and with industry to ensure that service providers are complying with the law and providing appropriate telecommunications services.

Our education efforts included a TRS forum in March 2000,[185] which presented an opportunity for consumers and industry representatives to exchange ideas with the Commission and state relay administrators about provision of TRS, common concerns of TRS administrators, consumers, and providers, and variations among states' approaches to TRS. The forum also discussed whether other technologies, services, and features should be made available to TRS users.

DRO also provides materials in accessible alternative formats, so individuals with disabilities have access to Commission proceedings, and has created an e-mail mailing list to keep consumers apprised of relevant happenings at the Commission.

Enforcement Bureau

The Commission established the Enforcement Bureau in November 1999. The new Enforcement Bureau has responsibility for ensuring that regulated entities comply with the Communications Act and the Commission's implementing rules. The consolidation of most enforcement functions into one bureau is consistent with the regulatory reform goals of section 11, because it makes it easier for competitors and consumers to get prompt and clear resolution of disputes. Consolidating enforcement activity into a single bureau promotes consistent and predictable enforcement policies. It also maximizes the efficiency of the Commission's enforcement program by allowing the agency to establish enforcement priorities and make the best use of limited Commission resources.

Clear, consistent and swift enforcement action is increasingly important as competition develops and deregulation occurs. The statutory and rule provisions that remain will be those that are necessary even in a competitive environment, such as those that provide a structure for competition to flourish, help users of communications services benefit from competitive communications services, and ensure that spectrum is used in a manner that prevents harmful interference and promotes public safety. In particular, the Enforcement Bureau is a critical part of the agency's plan to preserve and promote the competitive gains that have been made under the 1996 Act and the Commission's implementing regulations. To ensure fair competition, all competitors must play by the rules and follow the law. Companies may not gain a competitive advantage through unfair market practices. With the enhanced focus on enforcement, companies know that, if they violate communications law or the Commission's rules, there will be significant consequences. In this way, the competitive marketplace envisioned by Congress will work, and the benefits of that competition will flow to consumers.

Recent and Ongoing Activities

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[185] *See* FCC to Convene a Public Forum on Telecommunications Relay Services, *Public Notice*, Feb. 18, 2000, at http://www.fcc.gov/Bureaus/Consumer_Information/Public_Notices/2000/pnci0018.html.

Although the Enforcement Bureau generally does not engage in rulemaking activity or have responsibility for maintaining or revising substantive Commission rules, the agency has taken steps during the past few years in the area of enforcement to further the deregulatory goals of the 1996 Act. For example, the Commission revamped and streamlined its procedural rules governing the resolution of formal complaints against common carriers filed pursuant to section 208 of the Communications Act. These changes were designed to resolve disputes more quickly and efficiently than under prior rules.

Most significantly, under the new rules Enforcement Bureau staff has stepped up its efforts to mediate disputes between the parties both before and after a formal complaint is filed at the Commission. These mediation efforts often result in quick and efficient resolution of disputes. Business solutions achieved by the parties through Commission-assisted mediation avoid the expense and delay that can accompany formal litigation before the agency.

The revised rules also require that a complaining party provide all factual support for its case in its initial pleadings. This minimizes the need for time-consuming and resource-intensive discovery. In addition, the rules provide for the staff to convene an initial status conference with the parties shortly after the defendant files its answer. This presents an opportunity to simplify or narrow the issues, obtain admissions of fact or stipulations by the parties, settle some or all of the matters in controversy, and develop a schedule for the remainder of the case. This proactive case management tool helps ensure prompt and efficient case resolution.

In addition, the agency created an Accelerated Docket procedure in 1998 that results in quicker formal decisions from the agency for certain formal complaints selected by Bureau staff. Once a particular dispute is accepted by the staff onto the Accelerated Docket, the procedure is designed to lead to a written staff-level decision within 60 days from the filing of the complaint. Because this procedure may lead to a "mini-trial" with testimony by witnesses subject to cross-examination, it is particularly well suited for cases involving difficult factual disputes. The Accelerated Docket rules require staff-supervised pre-filing settlement discussions between the parties. Many disputes are settled without the need to file a formal complaint.

The efficiencies generated by the new complaint procedures, combined with an increased emphasis on mediation and aggressive case management, have resulted in a significant reduction in the number of pending formal common carrier complaints at the Commission. By reducing the backlog of pending cases, the staff can respond more quickly to new disputes as they are filed and resolve them in a timely fashion. Quick and clear resolution of disputes is critical to enhancing competition and enabling consumers to obtain the benefits of that competition.

Office Of Communications Business Opportunities

Section 257(c) of the Communications Act[186] requires the Commission to report triennially to Congress on the steps taken to eliminate market entry barriers for entrepreneurs and other small businesses in telecommunications. Section 257 was enacted as part of the 1996 Act[187] and focuses on two areas: (1) "the provision and ownership of telecommunications services and information services" and (2) "the provision of parts or services to providers of telecommunications services and information services."[188] Pursuant to the requirements of section 257, the Commission, in

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186 47 U.S.C. § 257(c).

187 Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996).

188 47 U.S.C. § 257(a).

1996, initiated a proceeding[189] to identify market entry barriers. In 1997 the Commission issued a report ("1997 Report")[190] referencing the policy objectives set forth in section 257 – "favoring [1] diversity of media voices, [2] vigorous economic competition, [3] technological advancement, and [4] promotion of the public interest, convenience, and necessity"[191] – and describing a variety of measures taken by the Commission to fulfill those policies.

Recent and Ongoing Activities

The Commission has just completed its second report under section 257 ("2000 Report"). The 2000 Report, which was delivered to Congress August 9, 2000, reflects the Commission's continuing compliance with the four policy objectives set forth *supra*. The report sets forth the Commission's Five-Year Strategic Plan and the role of that plan in eliminating market entry barriers. Following the discussion of the strategic plan, the bulk of the 2000 Report describes regulatory and other initiatives undertaken by the Commission's bureaus and offices since 1997 to remove market entry barriers and other impediments confronting small businesses. The report also analyzes efforts to overcome unique obstacles facing minority-owned and women-owned small businesses, discusses this Biennial Regulatory Review, addresses responsibilities under the Regulatory Flexibility Act (RFA) and the Small Business Act,[192] and introduces the agency's new electronic filing systems. Finally, the report sets forth some proposed legislative initiatives. The 2000 Report is available to the public on the Commission's website at http://www.fcc.gov/Bureaus/OCBO/fcc00279.html.

RFA Analyses and Certifications Since enactment of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA") amendments[193] to the Regulatory Flexibility Act,[194] the Commission has strived to make its RFA analyses more extensive, precise, and helpful, and to include a focus on plain language. For instance, because the agency typically writes rulemakings tailored to the various and numerous communications "services" it regulates (*e.g.*, FM radio, paging, satellite services, etc.), the agency has undertaken numerous RFA analyses describing each service and the extent of the small entity participation within each. This has required frequent revision of the service sector analyses, as new services are created and additional licenses for traditional services are issued. In this way, the agency attempts to ensure full and accurate analyses and certifications in the agency's 150 or more rulemaking items per year.

Special initiatives. Special initiatives have included internal training sessions for Commission staff on the RFA process and, a special RFA presentation conducted by the Small Business Administration's (SBA's) Office of Advocacy to train Commission staff. The presentation was held on October 12, 1999, and featured the SBA's Chief Counsel for Advocacy. Going forward, the FCC is committed to working with SBA and the small business community to

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189 *See In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, Notice of Inquiry*, 11 FCC Rcd 6280 (1996).

190 *See In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, Report*, 12 FCC Rcd 16802 (1997).

191 47 U.S.C. § 257(b).

192 Regulatory Flexibility Act of 1980, *as amended*, 5 U.S.C. § 601 *et seq.*; Small Business Act, 15 U.S.C. § 632.

193 The "Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA) was signed into law as Title II of the Contract With America Advancement Act of 1996, Pub. Law No. 104-121, 110 Stat. 847 (1996) (CWAAA).

194 *See* 5 U.S.C. §§ 601-612.

develop regulatory policies and procedures that are no more burdensome than necessary to achieve the intended goals. Another 1999 initiative was the resolution of the Commission's treatment of small incumbent local exchange carriers (LECs) under the RFA. In the *1997 Report*, the Commission stated that it did not believe that small incumbent LECs qualified as small businesses under the RFA because such businesses appeared to be "dominant in their field or operation due to their current control of bottleneck facilities."[195] Following a letter on the subject from the Office of Advocacy and a meeting between agency staffs, the Commission decided to revise the language of its decisions to make clear that small incumbent LECs are among the small businesses included in its analyses under the RFA.[196]

Annual "Ten-Year Review of Rules," 5 U.S.C. § 610. During 1999, the Commission completed and published an updated, comprehensive listing of Commission rule sections subject to review under the RFA's annual "ten-year review of rules" provision, 5 U.S.C. § 610. Section 610 requires that agencies publish in the *Federal Register* a plan for the periodic review of rules that have a significant economic impact on a substantial number of small entities. The recent Commission plan provides a list of hundreds of rules in an effort to assist the public in identifying rules that might be amended or rescinded in the public interest. In addition, the Commission has explored the creation of a computer software program that, utilizing historical Code of Federal Regulations data, would track rules over a ten-year period and significantly reduce the administrative work currently required to undertake a section 610 review. If the Commission were to accomplish this goal, it could share the computer program with other federal agencies subject to section 610 obligations, thereby assisting those agencies as well.

Special Small Business Size Standards, 15 U.S.C. § 632. To ensure that the agency's initiatives accurately target small entity participation in the telecommunications industry, the Commission works closely with the SBA's Office of Size Standards to create new telecommunications small business size standards. In particular, in recent years, the agency has coordinated extensively with both the SBA Office of Size Standards and the Office of Advocacy to create informal guidelines to keep the SBA apprised of size standard initiatives. The Commission's policy is to send SBA descriptions and analyses of proposed size standards prior to adoption of the Notice of Proposed Rulemaking in such proceedings, and thereafter to send to the SBA additional comments and documentation at each step of the way. At the end of the process, the Commission sends a formal request for approval to the SBA Administrator, prior to final Commission consideration of the new size standard. This close coordination has particularly helped the Commission to initiate radio spectrum auctions, where the goals are to make efficient use of the spectrum, give all Americans access to telecommunications services, and promote economic growth.

Semi-annual "Unified Agenda," 5 U.S.C. § 602. The Commission participates in the semi-annual publication of the "Unified Agenda of Federal Regulatory and Deregulatory Actions," which provides information, in a uniform format, about regulations that the government is considering or reviewing.[197] The Unified Agenda has appeared in the Federal Register twice each

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195 *1997 Report*, 12 FCC Rcd at 16853 (¶94).

196 Since 1996, the Commission had consistently included small incumbent LECs in its analyses, but had stated that it was doing so out of an abundance of caution concerning the status of incumbent LECs.

197 *See, e.g.*, 64 Fed. Reg. 63881, 65368 (Nov. 22, 1999). The Unified Agenda is typically published in April and October of each year. The Unified Agenda project is

year since 1983. It helps agencies comply with certain obligations under the RFA, other statutes, and Executive Orders. As a part of the October 1999 Unified Agenda compilation, the Commission listed and described 128 ongoing rulemaking proceedings. These descriptions assist the public in becoming involved in the regulatory process, and assist the regulated community in complying with existing regulation.

Office of Engineering and Technology

The Office of Engineering and Technology (OET), in addition to providing technical and engineering support to all of the bureaus and offices, has primary responsibility for the management and allocation of non-government spectrum, the authorization of telecommunications equipment and RF regulated devices, and the administration of the Experimental Radio Service. OET has specific responsibility for Parts 2, 5, 15 and 18 of the Commission's Rules. [198] All of the rules governing these responsibilities were reviewed by staff. OET sought recommendations regarding rules and procedures that should be modified or eliminated.

Recent and Ongoing Activities

OET has responsibility for authorizing radio frequency equipment and devices and has endeavored in the past several years to privatize and standardize this work. In addition to instituting electronic filing and streamlining the experimental radio service[199] and equipment authorization rules and processes,[200] the Commission modified the equipment authorization rules to allow designated private parties to issue equipment authorizations.[201] The Commission has also worked diligently to implement Mutual Recognition Agreements (MRAs), which permit designated parties in other countries to issue equipment authorizations.[202]

Through various spectrum management efforts, the Commission has endeavored to facilitate new, innovative and competitive services. Specifically, the Commission has facilitated the proliferation of unlicensed services through the allocation of spectrum for the Unlicensed National Information Infrastructure (UNII) and authorization of UNII devices. [203] These devices provide short-range, high-speed wireless digital communications that support wireless local area

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overseen by the Government Services Administration's Regulatory Information Service Center.

[198] 47 C.F.R. Parts 2, 5, 15 and 18.

[199] *Amendment of Part 5 of the Commission's Rules to Revise the Experimental Radio Service Regulations, Report and Order*, FCC 98-283, 13 FCC Rcd 21391 (1998).

[200] *Amendment of Parts 2, 15, 18, and Other Parts of the Commission's Rules to Simplify and Streamline the Equipment Authorization Process for Radio Frequency Equipment, Report and Order*, FCC 98-58, 13 FCC Rcd 11415 (1998).

[201] *Amendment of Parts 2, 25 and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment, Modify the Equipment Authorization Process for Telephone Terminal Equipment, Implement Mutual Recognition Agreements and Begin Implementation of Global Mobile Personal Communications by Satellite Arrangements, Report and Order*, FCC 98-338, 13 FCC Rcd 24687 (1998).

[202] *See* FCC Provides Further Information on the Accreditation Requirements for Telecommunication Certification Bodies, *Public Notice*, DA 99-1640, Aug. 17, 1999.

[203] *Amendment of Part 15 of the Commission's Rules to Provide for Unlicensed National Information Infrastructure Devices at 5 GHz, Report and Order*, FCC 97-5, 12 FCC Rcd 1576, *Memorandum Opinion and Order*, 13 FCC Rcd 14355 (1998).

networks and facilitate wireless access to the national information infrastructure. The Commission has also allocated millimeter wave spectrum for unlicensed devices that provide short-range communications.[204] These unlicensed devices can be used for such diverse services as vehicle radar systems for collision avoidance, computer-to-computer wireless connections, and improved access to libraries and information databases. The Commission has proposed to revise its rules for spread spectrum devices to facilitate the development of new and innovative technology that is often used for high data rate wireless applications.[205] The Commission recently proposed the possibility of permitting operation of one of the newest innovative wireless technologies, ultra-wideband technology.[206] This new technology can be used for a variety of applications such as radar imaging of objects under the ground or behind walls, and for wireless communications such as short-range high-speed data transmissions suitable for broadband access to the Internet.

In addition to unlicensed spectrum, the Commission allocated spectrum for Dedicated Short Range communications systems operating in the Intelligent Transportation System radio service.[207] These services and systems can provide short range wireless information links between vehicles and roadside systems, and can improve traveler safety, decrease traffic congestion, facilitate the reduction of air pollution and help conserve fossil fuels. Very recently, the Commission allocated spectrum for a new wireless medical telemetry service and established service rules that provide interference protection for the potentially life critical equipment used in hospitals and health care facilities that transmit patient measurement data such as pulse and respiration rates to nearby receivers.[208] The Commission has proposed allocating spectrum for fixed wireless access service which could be used to provide wireless local exchange and exchange access service.[209] The Commission also issued a *Policy Statement* articulating the principles that will guide the Commission's reallocation of approximately 200 MHz of spectrum over the next three to five years.[210] This spectrum will enable a broad range of new radio communications services, such as expanded wireless services, advanced mobile services, and new spectrum-efficient private land mobile systems.

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[204] *Amendment of Parts 2 and 15 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications, Third Report and Order*, 13 FCC Rcd 15074, *recon*. FCC 00-161 (adopted May 8, 2000).

[205] *Amendment of Part 15 of the Commission's Rules Regarding Spread Spectrum Devices, Notice of Proposed Rulemaking*, 14 FCC Rcd 13046 (1999).

[206] *Revision of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems, Notice of Inquiry*, 13 FCC Rcd 16376; *Notice of Proposed Rulemaking*, FCC 00-163 (adopted May 15, 2000).

[207] *Amendment of Parts 2 and 90 of the Commission's Rules to Allocate the 5.850-5.925 GHz Band to the Mobile Service for Dedicated Short Range Communications of Intelligent Transportation Services, Report and Order*, 14 FCC Rcd 18221 (1999).

[208] *Amendment of Parts 2 and 95 of the Commission's Rules to Create a Wireless Medical Telemetry Service, Notice of Proposed Rule Making*, 14 FCC Rcd 16719 (1999).

[209] *Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band, Notice of Proposed Rulemaking*, 14 FCC Rcd 1295 (1999).

[210] *Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, Policy Statement*, 14 FCC Rcd 19868 (1998).

With these new spectrum allocations, rules and principles, the Commission anticipates the development of a broad range of new devices and communications options that will stimulate economic development and the growth of new industries and promote the ability of manufacturers, including small businesses and entrepreneurs to compete both domestically and globally.

The Commission very recently began an inquiry to obtain more information about software defined radios.[211] In a software defined radio, functions formerly performed solely in hardware are performed by software. This innovation, which makes a radio programmable, could facilitate interoperability between radio services, improve efficient use of spectrum, expand opportunities for broadband communication access for all persons, increase competition among telecommunications service providers, decrease equipment costs for consumers, and increase worldwide market opportunities for US manufacturer of all sizes.

As follow-ups to proceedings initiated as part of OET's 1998 Biennial Regulatory Review efforts, the Commission proposed changes to its rules regarding conducted emission limits in Parts 15 and 18 of the rules[212] to make them more effective in controlling interference to communications services and to reduce the burden of these regulations. Review of the rules regulating radio frequency lighting devices resulted in the relaxation of the line-conducted emission limits in Part 18 of the rules for RF lighting devices operating in the 2.2-2.8 MHz band.[213] The Commission is continuing to examine the possible relaxation of the rules for RF lighting devices operating in the 2450 MHz band.[214]

New Initiatives

As part of the 2000 Biennial Regulatory Review process, the Commission recently proposed to streamline the process of developing technical criteria for customer premises equipment and to privatize the customer premises equipment approval process.[215] These proposals are intended to promote competition in the provision of telecommunications products and electronic equipment, speed delivery of products to the public and ensure market access in other countries.

The Commission has rules that restrict human exposure to radio frequency (RF) emissions in radio devices. Currently, radio devices such as cellular and PCS telephones manufactured and marketed in the United States must meet certain requirements regarding RF emissions. Specific Absorption Rate (SAR) is a measure of human exposure to radio signals. Notwithstanding intensive efforts both domestically and internationally by private standards-setting organizations, SAR measurement techniques are not currently standardized. Staff recommend that the Commission take steps to facilitate development of standardized SAR measurement techniques. A

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211 *Inquiry Regarding Software Defined Radios, Notice of Inquiry*, 15 FCC Rcd 5930 (2000).

212 47 C.F.R. Part 15 and Part 18.

213 *See In the Matter of 1998 Biennial Regulatory Review – Amendment of Part 18 of the Commission's Rules to Update Regulations for RF Lighting Devices, First Report and Order,* 14 FCC Rcd 9840 (1999).

214 *See In the matter of 1998 Biennial Regulatory Review – Amendment of Part 18 of the Commission's Rules to Update Regulations for RF Lighting Devices, Notice of Proposed Rulemaking,* 13 FCC Rcd 11307 (1998).

215 *2000 Biennial Regulatory Review Regulatory Review of Part 68 of the Commission's Rules and Regulations*, CC Docket No. 99-216, *Notice of Proposed Rulemaking*, FCC 00-171, adopted May 15, 2000.

standard SAR measurement procedure can make the already dynamic market for such equipment even more dynamic by increasing alternatives for approval, and improving the speed and predictability of the approval process.

The industry standard setting committee ANSI C63 recently developed an equipment testing procedure for unlicensed PCS systems.[216] The new procedure, C.63.4, removes ambiguities in the test procedure. The staff recommends incorporating the new standard into the Commission's rules by reference in order to update current test procedures.

The explosive growth in the international market for mobile communications devices such as cellular and PCS phones and marine and aviation devices has resulted in the manufacture of products that operate in dual modes or on frequencies not authorized for such operation in every country where the products are marketed. When such products are approved for sale in the United States, our rules are ambiguous as to whether the product complies with standards applicable for operation in international markets. The staff recommends this ambiguity be resolved and Commission rules clarify whether dual mode products approved in the United States must comply with other applicable international standards.

In the past decade commercial utilization of spectrum above 2 GHz has increased significantly. Licensed and unlicensed devices operating above 2 GHz have proliferated, in part because technical advances have made such devices affordable. When the Commission first authorized services and devices in this spectrum, radiated emission limits were established. At that time, the Commission had a significant accumulation of information on emissions below 2 GHz, but very little information on emissions above 2 GHz. Emission limits affect the design and performance of devices, and prevent interference among devices. However, unnecessarily restrictive limits can impede innovation and development of new markets. Accordingly, the staff recommends reviewing Commission rules on intentional and unintentional emission limits above 2 GHz to determine whether the limits are appropriate.

Current Commission rules prohibit unlicensed "periodic" (intermittent) transmitters at 40 MHz and above 70 MHz from transmitting continuous data signals.[217] The original rationale for this prohibition was that efficient utilization of the spectrum by multiple users was facilitated by limiting the amount of data transmissions within the band. Use of current technology, however, results in the opposite conclusion. The staff believes this rule can be updated to permit data transmissions and enable some new types of unlicensed wireless systems without changing the effect and intent of the original rule.

At present, the highest electromagnetic radio-frequency spectrum for which commercial service rules exist is 77 GHz. As a result of a program of the Defense Advanced Research Projects Agency, semiconductor device technology at 92-95 GHz is now available. Propagation in this band is relatively good, compared to other nearby frequencies, due to limited radio absorption by oxygen molecules. The short wavelengths generated in this "oxygen window" band can be effectively utilized by very small narrow beam antennas for high speed transmissions and high frequency reuse. The staff recommends exploring possible use of this band, including seeking

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[216] *See* American National Standard for Method of Measurement of the Electromagnetic Operational Compatibility of Unlicensed Personal Communications Services (UPCS) Devices, ANSI C63.17 (Mar. 24, 1998).

[217] 47 C.F.R. §15.231

initial inquiry on whether the band is appropriate for licensed or unlicensed use and for shared commercial and Government use.[218]

Other Issues

The staff's thorough review of the Commission's allocation and standards rules revealed a handful of rules adopted some time ago that address legacy systems or demographic locations that have changed significantly. Some of these rules or standards were instituted at the behest of the National Telecommunications and Information Administration at the Department of Commerce, acting pursuant to 47 U.S.C. § 305 on behalf of the Executive Branch, to protect Federal Government systems. The staff recommends revisiting with NTIA whether certain restrictions on non-government systems remain necessary.

In 1983, the Commission reviewed all of the technical rules to identify rules that might unnecessarily discourage technical innovation.[219] In view of the tremendous growth and innovation in telecommunications and radio systems and devices over the past decade, technical rules that are design-based as opposed to performance-based could be thwarting innovation and growth. Accordingly, the staff recommends that technical staff for OET, working with technical staff from the other Bureaus and Offices, again review the technical rules to ensure they permit flexibility while preventing interference and ensuring spectrum efficiency.

Office of General Counsel

The Office of General Counsel (OGC) advises, makes recommendations, and defends the Commission regarding legal issues that arise in a wide range of Commission activities. OGC does not have primary responsibility for drafting or overseeing compliance with substantive Commission rules, but it does recommend and oversee compliance with a variety of procedural rules. For example, OGC is involved in setting procedures for rulemakings, hearings, and other proceedings. These rules are included in Parts 0 and 1 of Title 47 of the Code of Federal Regulations.

OGC is committed to establishing processes that encourage participation by a broad a range of interested parties, in a convenient manner, and without unnecessary expense. At the same time, OGC works to ensure that the Commission's procedures conform to the notice and comment requirements of the Administrative Procedure Act (APA), and that parties have access to comments and other information that the Commission may consider in making its decisions.

Recent and Ongoing Activities

In 1997, the Commission revised its rules governing *ex parte* presentations in Commission proceedings.[220] Those revisions were intended to make the rules simpler and clearer. In 1999, the Commission found that, although its experience with the revised rules generally was positive, further minor revisions were warranted.[221] The Commission modified its rules regarding which persons would be treated as parties for purposes of determining *ex parte* status. The Commission also changed the *ex parte* status of certain types of proceedings from restricted to permit-but-disclose. The Commission determined that presentations to Commission representatives by

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[218] *See* FCC's Office of Engineering and Technology to Host Forum on 90 GHz Technologies, *Public Notice*, DA 00-1191, May 31, 2000.

[219] *Amendment of the Rules Resulting From Reexamination of Technical Parameters, Report and Order,* FCC 2d 903 (1984).

[220] *See* 47 C.F.R. §§ 1.1200 *et seq.*

[221] *Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings, Memorandum Opinion and Order,* 14 FCC Rcd 18831 (1999).

administrators, such as the Universal Service Administrative Company (*i.e.*, the entity that administers universal service), would be exempt. In addition, a person seeking Commission preemption is required to serve its preemption request upon any state or local government identified in the request. These revisions were intended to further simplify and clarify the Commission's *ex parte* rules, enhance the fairness of the Commission's processes, and facilitate the public's ability to communicate with the Commission.

In 1998, the Commission revised its rules and clarified its policies concerning the treatment of competitively sensitive information that carriers and others provide to the Commission. The Commission adopted a model protective order for use in its proceedings.[222]

Office of the Managing Director

The Office of the Managing Director (OMD) provides management and administrative support to the Commission's bureaus and offices. It administers management and administrative policy programs and directives supporting the deregulatory efforts of bureaus and offices and their goals to increase competition. The rules administered by OMD do not regulate telecommunications service providers directly. Traditionally, however, OMD has exercised jurisdiction over certain portions of Parts 0, 1, and 3 of Title 47 of the Code of Federal Regulations. OMD staff conducted a review of these regulations to determine whether to recommend that any of these rules be repealed or modified.

Initially, staff determined whether a section of the Communications Act was involved. For example, Part 0 contains the Commission's rules implementing the Freedom of Information Act (FOIA) and the Privacy Act, and Part 1 contains rules implementing the Debt Collection Improvement Act (DCIA) and the Ethics in Government Act. Other government agencies have primary responsibility for implementing these statutes. Therefore, the staff did not recommend changes to these rules. The staff reviewed rules based on the Communications Act to determine whether enactment of the 1996 Act affected the operation of these rules, and whether there had been any significant market changes or other developments that might affect the current rules and warrant modification or repeal.

As the Commission proceeds with its organization, OMD will continue to support bureaus and offices to ensure that its organization leads to increased efficiency and effectiveness. OMD will conduct annual reviews and will perform verifications as required. Oversight of accounting procedures will also continue. OMD will regularly evaluate its rules to determine whether they should be modified or eliminated in light of changing competitive market conditions.

Recent and Ongoing Activities

Part 0 covers the organization and general description of the Commission's organization and operations. This section concerns regulations pertaining to the administrative functions of the different bureaus and offices, delegations of authority to the Commissioners, bureaus and offices, the operation of the public reference rooms, and the agency's printed publications. Generally, these rules are amended whenever there is a reorganization. The Commission periodically reviews its organizational structure to ensure that it provides for the most efficient and effective structure for the Commission's functions. The Commission amended rules implementing the FOIA to reflect

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222 *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, Report and Order*, FCC 98-184, 13 FCC Rcd 24816 (1998).

the Electronic Freedom of Information Act,[223] but the rules may require further updating to reflect the restructuring of reference room operations following the move to the Portals and the availability of public records on the agency's Internet website.

Part 1, subpart A involves pleadings, filing periods, and motions for extension of time. These rules are administered by Office of the Secretary. The Commission recently made minor changes to some of these rules, and staff does not recommend further changes at this time.[224] Part 1 also covers statutory charges and procedures for payment of fees. These sections are reviewed annually and in some cases biannually, pursuant to the Communications Act.

Part 3 involves the certification and monitoring of accounting authorities. The Associate Managing Director for Financial Operations recently revised these rules to reflect the Commission's new location. Last year the Commission modified these rules to phase out the Commission's Accounting Authority [US01] and to privatize this function.[225]

New Initiatives

In August 1999, FCC Chairman William Kennard delivered to Congress the FCC's Strategic Plan for the 21st Century. The Strategic Plan has as one of its goals to "Create a Model Agency for the Digital Age.[226] One of the objectives under this goal is for the agency to "Lead the Way in the Information Age." The Office of the Managing Director seeks to meet this objective through the development and implementation of an intelligent, integrated, information management system known as the "Intelligent Gateway" or "Gateway." The "Gateway" will help the FCC develop its website into a model of accessibility and information availability.

Once funded, designed, and implemented, the Gateway will ensure swift, accurate, and complete access to information by the public, and will promote information sharing among the Bureaus and Offices. As a result, the agency will reduce duplicative staff efforts and will make available, in ways useful for both internal and external consumption, information about the number and priority of its pending tasks.

At least one industry group has expressed an interest in the public tracking of items on circulation before the Commission. As the Gateway develops, we recommend that the Commission consider whether to use it to permit the public to track items as they move through the Commission, prior to adoption.

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223 *Amendment of Part O of the Commission's Rules to Implement The Electronic Freedom of Information Act Amendments of 1996, Report and Order,* 13 FCC Rcd 3419 (1997).

224 *Amendment of the Commission's Rules of Practice and Procedure, Order,* 14 FCC Rcd 7593 (1999).

225 *1998 Biennial Regulatory Review - Review of Accounts Settlement in the Maritime Mobile and Maritime Mobile-Satellite Radio Services, Order,* 14 FCC Rcd 13504 (1999). The Commission concluded that it would cease operating as an accounting authority for settling accounts for maritime mobile, maritime satellite, aircraft and handheld terminal radio services. The Commission will transition to full privatization of the account-settlement function.

226 Draft Strategic Plan: A New FCC for the 21st Century, p. 9.

The Office of Management and Budget has directed federal agencies under the Government Paperwork Elimination Act (GPEA) to implement procedures that allow individuals or entities the option to submit information or transact with Federal Agencies electronically, when practicable, and to maintain records electronically, when practicable. GPEA also includes an electronic signature mechanism to provide verification and security for documents. The Performance Evaluation and Records Management Office is in the process of implementing these procedures.

The Commission is in the process of implementing an on line registration system, the Commission Registration System (CORES), for all entities filing applications or making payments to the Commission. Over time, the CORES registration number will be used by all Commission systems that handle financial, authorization of service and enforcement activities. CORES will provide the means for the Commission to administer more effectively its financial management responsibilities.

APPENDIX I: STAFF ACKNOWLEDGEMENTS

We would like to recognize the following staff for their participation in the 2000 Biennial Regulatory Review Working Group:

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APPENDIX II: 1998 BIENNIAL REGULATORY REVIEW PROCEEDINGS

A. PROCEEDINGS INITIATED – COMPLETED/SIGNIFICANT ORDERS ISSUED

Telecommunications Providers (Common Carriers)

Streamline and consolidate rules governing application procedures for wireless services to facilitate introduction of electronic filing via the Universal Licensing System. *1998 Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, WT Dkt No. 98-20, *NPRM*, FCC 98-25 (rel. March 19, 1998), *R&O*, FCC 98-234 (rel. Oct. 21, 1998).

Streamline the equipment authorization program by implementing the recent mutual recognition agreement with Europe and providing for private equipment certification. *1998 Biennial Regulatory Review – Amendment of Parts 2, 25 and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment, Modify the Equipment Authorization Process for Telephone Terminal Equipment, Implement Mutual Recognition Agreements and Begin Implementation of the Global Mobile Personal Communications by Satellite (GMPCS) Arrangements*, GEN Dkt No. 98-68, *NPRM*, FCC 98-92 (rel. May 18, 1998), *R&O*, FCC 98-338 (rel. Dec. 23, 1998).

Eliminate rules concerning the provision of telegraph and telephone franks. *1998 Biennial Regulatory Review – Elimination of Part 41 Telegraph and Telephone Franks*, CC Dkt No. 98-119, *NPRM*, FCC 98-152 (rel. July 21, 1998), *R&O*, FCC 98-344 (rel. Feb. 3, 1999).

In addition to addressing issues remanded by the Ninth Circuit, reexamine the nonstructural safeguards regime governing the provision of enhanced services by the Bell Operating Companies (BOCs) and consider elimination of requirement that BOCs file Comparably Efficient Interconnection (CEI) plans. *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Dkt Nos. 95-20 and 98-10, *FNPRM*, FCC 98-8 (rel. Jan. 30, 1998), *R&O*, FCC 99-36 (rel. Mar. 10, 1999).

Provide for a blanket section 214 authorization for international service to destinations where the carrier has no affiliate; eliminate prior review of *pro forma* transfers of control and assignments of international section 214 authorizations; streamline and simplify rules applicable to international service authorizations and submarine cable landing licenses. *1998 Biennial Regulatory Review – Review of International Common Carrier Regulations*, IB Dkt No. 98-118, *NPRM*, FCC 98-149 (rel. July 14, 1998), *R&O*, FCC 99-51 (rel. Mar. 23, 1999).

Removal or reduction of, or forbearance from enforcing, regulatory burdens on carriers filing for technology testing authorization. *1998 Biennial Regulatory Review – Testing New Technology*, CC Dkt No. 98-94, *NOI*, FCC 98-118 (rel. June 11, 1998), *Policy Statement*, FCC 99-53 (rel. Apr. 2, 1999).

Deregulate or streamline policies governing settlement of accounts for exchange of telephone traffic between U.S. and foreign carriers. *1998 Biennial Regulatory Review – Reform of the International Settlements Policy and Associated Filing Requirements*, IB Dkt No. 98-148, *NPRM*, FCC 98-190 (rel. Aug. 6, 1998), *R&O*, FCC 99-73 (rel. May 6, 1999).

Deregulate radio frequency (RF) lighting requirements to foster the development of new, more energy efficient RF lighting technologies. *1998 Biennial Regulatory Review – Amendment of Part 18 of the Commission's Rules to Update Regulations for RF Lighting Devices*, ET Dkt No. 98-42, *NPRM*, FCC 98-53 (rel. Apr. 9, 1998), *R&O*, FCC 98-135 (rel. June 6, 1999).

Modify accounting rules to reduce burdens on carriers. *1998 Biennial Regulatory Review – Review of Accounting and Cost Allocation Requirements*, CC Dkt No. 98-81, *NPRM*, FCC 98-108 (rel. June 17, 1998), *R&O*, FCC 99-106 (rel. June 30, 1999).

Eliminate duplicative or unnecessary common carrier reporting requirements. *1998 Biennial Regulatory Review – Review of ARMIS Reporting Requirements*, CC Dkt No. 98-117, *NPRM*, FCC 98-147 (rel. July 17, 1998), *R&O*, FCC 99-107 (rel. June 30, 1999).

Privatize the administration of international accounting settlements in the maritime mobile and maritime satellite radio services. *1998 Biennial Regulatory Review – Review of Accounts Settlement in the Maritime Mobile and Maritime Mobile-Satellite Radio Services and Withdrawal of the Commission as an Accounting Authority in the Maritime Mobile and the Maritime Mobile-Satellite Radio Services Except for Distress and Safety Communications*, IB Dkt No. 98-96, *NPRM*, FCC 98-123 (rel. July 17, 1998), *R&O and FNPRM*, FCC 99-150 (rel. July 13, 1999).

Streamline and rationalize information and payment collection from contributors to Telecommunications Relay Service, North American Numbering Plan Administration, Universal Service, and Local Number Portability Administration funds. *1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, CC Dkt No. 98-171, *NPRM*, FCC 98-233 (rel. Sept. 25, 1998), *R&O*, FCC 99-175 (rel. July 15, 1999).

Repeal Part 62 rules regarding interlocking directorates among carriers. *1998 Biennial Regulatory Review – Repeal of Part 62 of the Commission's Rules*, CC Dkt No. 98-195, *NPRM*, FCC 98-294 (rel. Nov. 17, 1998), *R&O*, FCC 99-163 (rel. July 16, 1999).

Simplify Part 61 tariff and price cap rules. *1998 Biennial Regulatory Review – Part 61 of the Commission's Rules and Related Tariffing Requirements*, CC Dkt No. 98-131, *NPRM*, FCC 98-164 (rel. July 24, 1998), *R&O*, FCC 99-173 (rel. Aug. 8, 1999).

Consider modifications or alternatives to the 45 MHz CMRS spectrum cap and other CMRS aggregation limits and cross-ownership rules. *1998 Biennial Regulatory Review – Review of CMRS Spectrum Cap and Other CMRS Aggregation Limits and Cross-Ownership Rules*, WT Dkt No. 98-205, *NPRM*, FCC 98-308 (rel. Dec. 18, 1998), *R&O*, FCC 99-244 (rel. Sept. 22, 1999).

Eliminate or streamline various rules prescribing depreciation rates for common carriers. *1998 Biennial Regulatory Review – Review of Depreciation Requirements for Incumbent Local Exchange Carriers*, CC Dkt No. 98-137, *NPRM*, FCC 98-170 (rel. Oct. 14, 1998), *R&O*, FCC 99-397 (rel. Dec. 17, 1999), *FNPRM*, FCC 00-119 (rel. Apr. 3, 2000).

Other

Amend cable and broadcast annual employment report due dates to streamline and simplify filing. *1998 Biennial Regulatory Review – Amendment of sections 73.3612 and 76.77 of the*

Commission's Rules Concerning Filing Dates for the Commission's Equal Employment Opportunity Annual Employment Reports, MO&O, FCC 98-39 (rel. Mar. 16, 1998).

Streamline broadcast filing and licensing procedures. *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules and Processes*, MM Dkt No. 98-43, *NPRM*, FCC 98-57 (rel. Apr. 3, 1998), *R&O*, FCC 98-281 (rel. Nov. 25, 1998), *on recon.*, 14 FCC Rcd 17525 (1999).

Provide for electronic filing for assignment and change of radio and TV call signs. *1998 Biennial Regulatory Review – Amendment of Part 73 and Part 74 Relating to Call Sign Assignments for Broadcast Stations*, MM Dkt No. 98-98, *NPRM*, FCC 98-130 (rel. June 30, 1998), *R&O*, FCC 98-324 (rel. Dec. 16, 1998).

Simplify and unify Part 76 cable pleading and complaint process rules. *1998 Biennial Regulatory Review – Part 76 - Cable Television Service Pleading and Complaint Rules*, CS Dkt No. 98-54, *NPRM*, FCC 98-68 (rel. Apr. 22, 1998), *R&O*, FCC 98-348 (rel. Jan. 8, 1999).

Streamline the Gettysburg reference facilities so that electronic filing and electronic access can substitute for the current method of written filings/access. *1998 Biennial Regulatory Review – Amendment of Part 0 of the Commission's Rules to Close the Wireless Telecommunications Bureau's Gettysburg Reference Facility*, WT Dkt No. 98-160, *NPRM*, FCC 98-217 (rel. Sept.18, 1998), *R&O*, FCC 99-45 (rel. Mar. 11, 1999).

Streamline and consolidate public file requirements applicable to cable television systems. *1998 Biennial Regulatory Review – Streamlining of Cable Television Services Part 76 Public File and Notice Requirements*, CS Dkt No. 98-132, *NPRM*, FCC 98-159 (rel. July 20, 1998*), R&O*, FCC 99-12 (rel. Mar. 26, 1999).

Streamline AM/FM radio technical rules and policies. *1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, MM Dkt No. 98-93, *NPRM*, FCC 98-117 (rel. June 15, 1998), *First R&O*, FCC 99-55 (rel. Mar. 30, 1999).

Modify or eliminate Form 325, annual cable television system report. *1998 Biennial Regulatory Review – "Annual Report of Cable Television System," Form 325, Filed Pursuant to Section 76.403 of the Commission's Rules*, CS Dkt No. 98-61, *NPRM*, FCC 98-79 (rel. Apr. 30, 1998), *R&O*, FCC 99-13 (rel. Mar. 31, 1999).

Streamline application of Part 97 amateur service rules. *1998 Biennial Regulatory Review – Amendment of Part 97 of the Commission's Amateur Service Rules*, WT Dkt No. 98-143, *NPRM*, FCC 98-1831 (rel. Aug. 10, 1998), *R&O*, FCC 99-412 (rel. Dec. 30, 1999).

Conduct broad inquiry into broadcast ownership rules not the subject of other pending proceedings. *1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to section 202 of the Telecommunications Act of 1996*, MM Dkt No. 98-35, *NOI*, FCC 98-37 (rel. Mar. 13, 1998), *Report*, FCC 00-191 (rel. June 20, 2000).

Streamline Part 90 private land mobile services rules. *1998 Biennial Regulatory Review – 47 C.F.R. Part 90 – Private Land Mobile Radio Services*, WT Dkt No. 98-182, *NPRM*, FCC 98-251 (rel. Oct. 20, 1998), *R&O*, FCC 00-235 (rel. July 12, 2000).

Telecommunications Providers (Common Carriers)

In *NPRM* portion, consider forbearance from additional requirements regarding telephone operator services applicable to commercial mobile radio service providers (CMRS) and, more generally, forbearance from other statutory and regulatory provisions applicable to CMRS providers. *Personal Communications Industry Association's Broadband Personal Communications Services Alliances' Petition for Forbearance For Broadband Personal Communications Services; 1998 Biennial Regulatory Review - Elimination or Streamlining of Unnecessary and Obsolete CMRS Regulations; Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers*, WT Dkt No. 98-100, *MO&O and NPRM*, FCC 98-134 (rel. July 2, 1998).

Modify Part 68 rules that limit the power levels at which any device attached to the network can operate to allow use of 56 Kbps modems. *1998 Biennial Regulatory Review – Modifications to Signal Power Limitations Contained in Part 68 of the Commission's Rules*, CC Dkt No. 98-163, *NPRM*, FCC 98-221 (rel. Sept. 16, 1998).

Modify or eliminate Part 64 restrictions on bundling of telecommunications service with customer premises equipment. *1998 Biennial Regulatory Review – Policy and Rules Concerning the Interstate, Interexchange Marketplace/implementation of Section 254(g) of the Communications Act of 1934, as Amended/Review of the Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, CC Dkt Nos. 98-183 and 96-61, *FNPRM*, FCC 98-258 (rel. Oct. 9, 1998).

Seek comment on various deregulatory proposals of SBC Communications, Inc. not already subject to other biennial regulatory review proceedings. *1998 Biennial Regulatory Review – Petition for Section 11 Biennial Regulatory Review filed by SBC Communications, Inc., Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell*, CC Dkt No. 98-177, *NPRM*, FCC 98-238 (rel. Nov. 24, 1998). [Proceeding superceded by *Common Carrier Bureau Announces Agenda for Initial Workshop for Phase I of the Comprehensive Review of Commission's Accounting and Reporting Requirements and Treatment of Ex Parte Presentations in Related Proceedings, Public Notice*, DA 99-758 (rel. Apr. 19, 1999); *Common Carrier Bureau Announces Initiative to Undertake Comprehensive Review of Part 32 and ARMIS Requirements, Public Notice*, DA 99-695 (rel. Apr. 12, 1999); *In the Matter of Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 1*, CC Dkt No. 99-253, *NPRM*, FCC 99-174 (rel. July 14, 1999); *Report and Order*, FCC 00-78 (rel. Mar, 8, 2000)].

Other

Review current Part 15 and Part 18 power line conducted emissions limits and consider whether the limits may be relaxed to reduce the cost of compliance for a wide variety of electronic equipment. *1998 Biennial Regulatory Review – Conducted Emissions Limits Below 30 MHz for Equipment Regulated Under Parts 15 and 18 of the Commission's Rules*, ET Dkt No. 98-80, *NOI*, FCC 98-102 (rel. June 8, 1998), *NPRM*, FCC 99-296 (rel. Oct. 18, 1999).

APPENDIX III: INDUSTRY GROUPS INTERVIEWED

Association for Local Telecommunications Service (ALTS)
Competitive Telecommunications Association (CompTel)
Cellular Telecommunications Industry Association (CTIA)
Federal Communications Bar Association (FCBA) (various committees)
National Association of Broadcasters (NAB)
National Cable Television Association (NCTA)
National Exchange Carrier Association (NECA)
National Telephone Cooperative Association (NTCA)
Organization For the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)
Personal Communication Industry Association (PCIA)
Satellite Industry Association (SIA)
United States Telecommunication Association (USTA)

APPENDIX IV: RULE PART ANALYSIS

PART 1 – PRACTICE AND PROCEDURE

Description

Part 1 contains rules governing general practice and procedure before the Commission, including rules and procedures governing applications and licensing, rulemakings, complaints, hearings, and a variety of other Commission processes. Part 1 also contains miscellaneous rules implementing certain statutes other than the Communications Act that affect Commission processes, such as the National Environmental Policy Act, the Equal Access to Justice Act, and the Anti-Drug Abuse Act. Some of these rules apply generally to all entities that conduct business before the Commission, others apply to specific groups of licensees or other regulated entities, while others apply solely to the Commission and its staff.

Part 1 contains 19 subparts:

Subpart A – General Rules of Practice and Procedure – General rules for filing of pleadings with and appearances before the Commission; procedures for miscellaneous Commission proceedings, including forfeitures, license modifications, revocation or cease and desist proceedings, consent orders, reconsiderations (other than reconsiderations in rulemaking proceedings), and applications for review.

Subpart B – Hearing Proceedings – Procedural rules for hearing proceedings.

Subpart C – Rulemaking Proceedings – Procedural rules for rulemaking proceedings.

Subpart D – Broadcast Applications and Proceedings

Subpart E – Complaints, Applications, Tariffs, and Reports Involving Common Carriers – Procedural rules pertaining to filings by and complaints against common carriers.

Subpart F – Wireless Telecommunications Services Applications and Procedures – Application and licensing rules for wireless services.

Subpart G – Schedule of Statutory Charges and Procedures – Fee schedule for application and regulatory fees charged by the Commission, pursuant to sections 8 and 9 of the Communications Act.[1]

Subpart H – Ex Parte Communications – Rules governing *ex parte* communications and presentations in Commission proceedings.

Subpart I – Procedures Implementing the National Environmental Policy Act of 1969 (NEPA)[2] – Application and licensing rules for FCC-licensed facilities that require environmental clearance under NEPA due to potential impact on environmentally sensitive areas.

Subpart J – Pole Attachment Complaint Procedures – Complaint procedures applicable to cable companies and telecommunications carriers that seek to obtain non-discriminatory access to utility poles, ducts, conduits, and rights-of-way on reasonable rates, terms, and conditions.

Subpart K – Implementation of the Equal Access to Justice Act (EAJA) in Agency Proceedings[3] – Rules and procedures for parties to Commission administrative proceedings who seek recovery of attorneys fees and expenses pursuant to the EAJA.

Subpart L – Random Selection Procedures for Mass Media Services – Rules and procedures for use of lotteries to award certain categories of broadcast licenses. [Not applicable to telecommunications carriers.]

Subpart N – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities

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1 47 U.S.C. §§ 158, 159.

2 42 USC §§ 4321-4347.

3 5 U.S.C. § 504.

Conducted by the Federal Communications Commission – Rules implementing the Rehabilitation, Comprehensive Services, and Disabilities Amendments of 1978,[4] which prohibits Executive agencies from discriminating against persons with disabilities in programs or activities conducted by the agency. [Not applicable to telecommunications carriers.]

Subpart O – Collection of Claims Owed the United States – Rules allowing the Commission to collect certain debts owed to the United States through administrative or salary offsets.

Subpart P – Implementation of the Anti-Drug Abuse Act of 1998[5] – Rules requiring certain Commission applicants to certify that they are not subject to denial of Federal Benefits under section 5301 of the ADAA due to a conviction for possession or distribution of a controlled substance.

Subpart Q – Competitive Bidding Procedures – Rules governing the mechanisms and procedures for competitive bidding to award spectrum licenses.

Subpart R – Implementation of section 4(g)(3) of the Communications Act: Procedures Concerning Acceptance of Unconditional Gifts, Donations, and Bequests – Rules restricting acceptance of gifts by Commission employees. [Not applicable to telecommunications carriers.]

Subpart S – Preemption of Restrictions That "Impair" a Viewer's Ability to Receive Television Broadcast Signals, Direct Broadcast Satellites, or Multi-Channel Multipoint Distribution Services – Rules preempting state and local regulation of antennas for reception of video programming via broadcast, satellite, or multipoint distribution services. [Not applicable to telecommunications carriers.]

Subpart T – Exempt Telecommunications Companies – Rules implementing provisions of the Telecommunications Act of 1996 by which a public utility holding company may obtain a determination from the Commission of status as an Exempt Telecommunications Company (ETC).

Purpose

The primary purpose of the Part 1 rules, particularly subparts A through L and subpart Q, is to establish fair and equitable rules of practice and procedure before the Commission for applicants, licensees, and other entities regulated by the Commission. Other subparts of Part 1 serve other purposes, such as compliance with external statutory mandates.

Analysis

Advantages

The procedural rules in Part 1 provide uniform direction to applicants, licensees, and other entities in a wide variety of Commission proceedings. Consolidation of the Commission's procedural rules in Part 1 helps to ensure consistency in the Commission's processes across services, Bureaus, and offices.

Disadvantages

The Part 1 rules impose inherent administrative burdens on applicants, licensees, and other parties that practice before the Commission.

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[4] Pub. Law No. 95-602, 92 Stat 2955 (1978) (codified at 29 U.S.C. § 794).

[5] 21 U.S.C. § 862.

Recent Efforts

Certain portions of the Part 1 rules, such as the wireless licensing rules (subpart F), the *ex parte* rules (subpart H), and the Commission's competitive bidding rules (subpart Q) have been revamped in recent rulemaking proceedings.[6] In addition, Part 1 was recently amended to allow parties to file comments and other pleadings electronically via the Internet in informal notice and comment rulemaking proceedings under section 553 of the Administrative Procedure Act.[7] In that *Report and Order*, the rules were also amended to permit electronic filing of all pleadings and comments in proceedings involving petitions for rulemaking and Notice of Inquiry proceedings. Since that time, other Bureaus have amended Part 1 to include the electronic filing of applications.

Recommendation

The Part 1 rules are essential to the orderly conduct of business before the Commission. In addition, as noted above, key portions of Part 1 have been recently revamped. The staff therefore recommends no significant changes to the Part 1 rules at this time. However, as the Commission proceeds to implement new initiatives in the area of electronic filing, further amendment of the rules is envisioned. In addition, the staff intends to closely monitor the practical application of these rules, and will recommend appropriate rule changes in the future if the rules no longer best achieve their underlying purposes. [Note: Staff recommendations with respect to certain subparts of Part 1 are discussed in the sections below.]

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[6] *See Amendment of Parts 0, 1, 13, 22, 24 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, Report and Order*, 13 FCC Rcd 21027 (1998) (*ULS Report and Order*); *Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings, Report and Order*, 12 FCC Rcd 7348 (1997); *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374 (1997) (modified by *Erratum*, DA 98-419) (rel. Mar. 2, 1998).

[7] *In The Matter of Electronic Filing of Documents in Rulemaking Proceedings, Report and Order*, 13 FCC Rcd 11322 (1998).

PART 1, SUBPART E – COMPLAINTS, APPLICATIONS, TARIFFS, AND REPORTS INVOLVING COMMON CARRIERS – FORMAL COMPLAINTS

Description

The rules governing formal complaints against common carriers implement section 208 of the Communications Act of 1934, as amended.[8] Section 208 permits any person to lodge a complaint with the Commission against a common carrier alleging a violation of the Communications Act. In addition, Congress amended the Communications Act in 1996, among other things, to establish specific procedures and, in some cases, timeframes for complaints concerning certain new statutory provisions. See, for example, sections 260 (telemessaging), 271 (Bell operating company entry into long distance market), 274 (Bell operating company provision of electronic publishing service), 275 (Bell operating company provision of alarm monitoring service). The Commission's formal complaint rules implement these new statutory provisions.

Purpose.

These rules establish procedures for Commission receipt and review of formal complaints lodged against common carriers. The rules are designed to expedite the resolution of formal complaints while safeguarding the due process interests of the affected parties. In addition, the rules are intended to foster the pro-competitive, deregulatory goals of the Telecommunications Act of 1996 by providing for prompt and efficient enforcement of the statute and the Commission's substantive rules implementing the statute.

Analysis.

Status of Competition

Because section 208 permits complaints against a wide range of common carriers involving a host of obligations, it is not feasible to characterize the status of competition with respect to the variety of common carriers and markets subject to this statutory provision.

Advantages

The rules provide procedures to expedite resolution of disputes involving a common carrier. As noted in the Staff Report, the rules permit and encourage staff-sponsored mediation between the parties both before and after a formal complaint is filed at the Commission. These mediation efforts often result in quick and efficient resolution of disputes. Business solutions achieved by the parties through Commission-assisted mediation avoid the expense and delay that can accompany formal litigation before the agency.

The rules also require that a complaining party provide all factual support for its case in its initial pleadings. This, in turn, minimizes the need for time-consuming and resource-intensive discovery. In addition, the rules provide for the staff to convene an initial status conference with the parties shortly after the defendant files its answer. This present an opportunity to simplify or narrow the issues, obtain admissions of fact or stipulations by the parties, settle some or all of the matters in controversy, and develop a schedule for the remainder of the case. This proactive case management tool helps ensure prompt and efficient case resolution.

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[8] 47 U.S.C. § 208.

Moreover, the rules provide an Accelerated Docket procedure that results in quicker formal decisions from the agency for certain formal complaints selected by the staff. Once a particular dispute is accepted by the staff onto the Accelerated Docket, the procedure is designed to lead to a written staff-level decision within 60 days from the filing of the complaint. Because this procedure may lead to a "mini-trial" with testimony by witnesses subject to cross-examination, it is particularly well suited for cases involving difficult factual issues. The Accelerated Docket rules require staff-supervised pre-filing settlement discussions between the parties. Thus, many disputes are settled without the need to file a formal complaint.

Disadvantages.

Formal litigation can be expensive and time-consuming. The rules attempt to minimize these liabilities by enhancing mediation and limiting discovery, while recognizing the due process interests of the affected parties. Nevertheless, section 208 creates a statutory process for persons to file complaints against common carriers and obligates the Commission to investigate those complaints, often within tight timeframes. Procedural rules are thus necessary to discharge this statutory directive.

Recent Efforts.

As noted in the Staff Report, the Commission revamped and streamlined these rules in 1997 and 1998 in light of the pro-competitive, deregulatory goals of the Telecommunications Act of 1996. The 1997 rule changes, in general, were designed to: (1) promote settlement efforts to enable parties to resolve disputes on their own; (2) improve the utility and content of pleadings; and (3) streamline the formal complaint process by eliminating or limiting procedural devices and pleading opportunities that contributed to undue delay. The 1998 rule changes created the Accelerated Docket. These specialized rules provide a framework for expeditious resolution of certain carrier-related complaints.

Recommendation.

The staff recommends no changes to the rules at this time because the rules were recently revamped and streamlined. However, the staff intends to closely monitor the practical application of all the rules governing formal complaints against common carriers. The staff will recommend appropriate rule changes in the future if the rules no longer achieve their underlying purposes, or if rule changes will better serve the public interest in light of competitive developments in the marketplace.

PART 1, SUBPART F – WIRELESS TELECOMMUNICATIONS SERVICES APPLICATIONS AND PROCEDURES

Description

Part 1, subpart F[9] sets forth procedural rules governing the filing of applications and the issuance of wireless licenses. The rules cover all of the basic types of applications associated with wireless licensing, including initial applications, amendments and modifications, waiver requests, requests for special temporary authorization, assignment and transfer applications, and renewals. In addition, subpart F includes rules concerning public notices, petitions to deny, dismissal of applications, and termination of licenses.

The subpart F rules were adopted as part of the 1998 Biennial Regulatory Review in the *Universal Licensing* proceeding, WT Docket No. 98-20.[10] The Commission initiated this proceeding in connection with the implementation of the Universal Licensing System (ULS), an integrated, automated system for electronic filing and processing of wireless applications. In the *Universal Licensing* proceeding, the Commission consolidated and streamlined its procedural rules into subpart F, which replaced numerous service-specific rules that had previously applied to different wireless services. In addition, the Commission adopted new standardized application forms designed for use in ULS, and adopted rules requiring all wireless telecommunications carriers, as well as certain other classes of wireless licensees, to file applications electronically.[11]

Purpose

The purpose of subpart F is to: (1) establish uniform procedures for the licensing of all wireless services; (2) minimize filing requirements by eliminating redundant, inconsistent, or unnecessary submissions; and (3) ensure the collection of reliable information from applicants and licensees.

Analysis

Advantages

Consolidating the wireless procedural rules into a single subpart provides greater clarity, consistency, and predictability to the licensing process than the prior array of sometimes inconsistent service-specific rules, forms, and procedures. This lessens the filing burden on applicants, and also facilitates more rapid and efficient processing by the Commission.

Disadvantages

The requirement of electronic filing for all wireless telecommunications carriers imposes certain technical burdens and costs. In addition, the general procedural rules contained in subpart F impose administrative burdens on wireless applicants and licensees that are inherent to the licensing process.

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9 47 C.F.R. Part 1, subpart F.

10 *Amendment of Parts 0, 1, 13, 22, 24 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service*, 98-20, *Report and Order*, 13 FCC Rcd 21027 (1998) (*ULS Report and Order*).

11 47 C.F.R. §1.913.

Recent Efforts

The Commission most recently reviewed the subpart F rules in its 1999 reconsideration of the *ULS Report and Order,* in which it made minor but not substantial changes to the rules.[12]

Recommendation

In light of the Commission's recent adoption and review on reconsideration of subpart F, the staff does not perceive the need for significant modification or revision of the rules. The staff recommends continuing to monitor developments as the Wireless Bureau completes its implementation of ULS for all wireless services, which is expected to occur by the end of the year.

[12] *Amendment of Parts 0, 1, 13, 22, 24 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11476 (1999).

PART 1, SUBPART I – PROCEDURES IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Description

Subpart I of the Commission's rules[13] implements the requirements of the National Environmental Policy Act (NEPA)[14] as well as a series of other federal environmental laws, such as the Endangered Species Act of 1973, as amended,[15] The National Historic Preservation Act of 1966,[16] the Wilderness Act of 1964, as amended,[17] laws relating to Indian Ceremonial Sites[18] and the Wildlife Refuge Laws.[19] In addition, the Commission's environmental rules implement Executive Orders regarding flood plains and wetlands regulation.[20] By statute and/or as set forth in the regulations of the Council on Environmental Quality (CEQ),[21] the Commission is responsible for ensuring compliance with these laws. The rules, finally, identify certain special issues for consideration, including the impact of high-intensity white lights on towers in residential neighborhoods[22] and the effect of radiofrequency emissions on the human environment.[23]

Purpose

The purpose of the Commission's environmental rules is to identify those sensitive environmental issues which Commission licensees must address. As the primary Federal agency managing and licensing radio spectrum to broadcasters, wireless telephone carriers and other public and private radio users, the Commission complies with NEPA by requiring its licensees to assess and, if found, report the potential environmental consequences of their proposed projects.

If a federally-licensed facility, such as the construction of a tower by a licensee, might affect the environment in one of the ways described in the rules, the licensee, on behalf of the Commission, is required to consider the potential environmental effects from its project, to describe those potential effects in an environmental assessment (EA) and file that document with the Commission.[24] The Commission has concluded that actions not identified in its rules are categorically excluded from environmental review.[25] The Commission's environmental rules then explain what information is required in an EA,[26] the methods

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13 The Commission's environmental rules are codified at 47 C.F.R. §§ 1.1301-1.1319.
14 42 USC § 4321-4347.
15 16 USC § 1531-1543.
16 *Id*. § 470.
17 *Id*. § 1131-1136.
18 *Id*. § 470aa.
19 *Id*. § 668dd.
20 *See* Executive Orders 11988 (floodplains) and 11990 (wetlands).
21 40 C.F.R. § 1501-1508.
22 47 C.F.R. § 1.1307(a)(8).
23 *Id*. § 1.1307(b).
24 *Id.* § 1.1307(a).
25 *Id.* § 1.1306.
26 *Id.* §§ 1.1308, 1.1311.

for the public to file objections to EAs,[27] and those situations in which a full environmental impact statement must be completed,[28] as required by NEPA.

Analysis

Advantages

The Commission's environmental rules meet the Commission's obligation as a federal agency to consider the affect on the environment, as required by a number of statutes, of proposed facilities constructed by its licensees. The principal advantage of the Commission's environmental rules is that they streamline compliance with multiple environmental laws and focus environmental review activities to those that have a potential to significantly affect the environment. The rules rely on licensees to perform preliminary analyses to determine if there will be an environmental effect by contacting expert state and federal agencies. Only where there may be an environmental effect are licensees required to file environmental assessments with the Commission. Thus, a substantial number of facilities are categorically excluded from processing by the Commission because licensees have determined the proposed facilities will not affect the environment. In those cases where there may be an effect on the environment a detailed evaluation of the environmental effect is performed by the licensee, filed with the Commission, and approved prior to construction of the proposed facilities.

Disadvantages

The environmental laws as implemented by the Commission can create administrative burdens and delays in the implementation of federally-licensed projects. Moreover, the expert agencies contacted by licensees to determine if proposed projects will have an environmental effect are potentially overburdened with the number of requests from the Commission's licensees because of substantial facility construction. Because the Commission's rules are streamlined and rely on licensees to make the initial evaluation of environmental effect of proposed facilities, licensees sometimes construct facilities that have an adverse effect on the environment without obtaining approval from the Commission. In these cases, licensees generally construct without contacting expert agencies or adequately assessing the effect on the environment.

Recent Efforts

The Commission staff is currently conducting negotiations with the Advisory Council on Historic Preservation designed to develop a programmatic agreement to streamline compliance with historic preservation laws. Members of the staff have also attended various environmental seminars, workshops, and meetings to identify areas where the FCC has compliance obligations, to explain the Commission's rules, and to evaluate how the FCC's environmental obligations can be streamlined.

Recommendation

In general, the staff recommends that the subpart I rules be retained because they are statutorily mandated and fulfill important public interest goals. The staff also recommends, however, that the rules be evaluated on an ongoing basis to determine whether they meet the Commission's environmental obligations and can be streamlined in order to minimize administrative cost and delay.

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[27] *Id.* § 1.1313.

[28] *Id.* § 1.1314-1.1319.

PART 1, SUBPART J - POLE ATTACHMENT COMPLAINT PROCEDURES

Description

Subpart J implements section 224 of the Communications Act of 1934, as added by Pub. Law No. 95-234, as amended. The Telecommunications Act of 1996[29] significantly amended section 224. Subpart J contains complaint and enforcement procedures to ensure that telecommunications carriers and cable system operators have nondiscriminatory access to a utility's poles, ducts, conduits and rights-of-way with rates, terms and conditions that are just and reasonable. It is applicable in States that have not certified to the Commission that they regulate pole attachments.

Purpose

The purpose of subpart J is to provide a simple and expeditious process for resolving complaints filed pursuant to section 224 of the Communications Act of 1934, as amended. Subpart J sets forth uniform definitions, procedures and requirements for an aggrieved party to seek redress for unjust and unreasonable rates, terms and conditions which act to impede deployment of facilities and equipment necessary to foster diverse communication capability throughout the nation.

Analysis

Status of Competition

The relevant market for purposes of pole attachment regulation is the existing local pool of poles, ducts, conduits and rights-of-way to which cable or telecommunications service providers, out of necessity or business convenience, must attach their distribution facilities. At the time of adoption of section 224, utilities enjoyed a superior bargaining position over attachers in negotiating the rates, terms and conditions for pole attachments due to the utilities' monopoly position in the ownership or control of these facilities.[30] That monopoly position has not changed since the passage of section 224, leaving open the possibility of anti-competitive practices by utilities against cable or competitive telecommunications providers in the absence of section 224.

Advantages

Subpart J provides a simple and expeditious complaint process and methodology to determine a maximum just and reasonable pole attachment rate a utility may charge an attaching telecommunications carrier or cable system operator. When a dispute arises, subpart J provides a mechanism for preventing unfair pole attachment practices, thereby minimizing the effect of unjust and unreasonable pole attachment practices on the deployment of cable television and telecommunications services to the public.[31] Because subpart J provides a means for parties to predict an estimated rate a utility may charge by using an established set of formulas based on rebuttable presumptions and generally publicly available data that utilities report to their respective regulatory agencies, it promotes successful negotiation between parties and reduces the burden which might otherwise be associated with rate setting.

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29 Pub. Law No. 104-104, 104 Stat. 56, 149-151 (amending 47 U.S.C. § 224).

30 *See* 1977 Senate Report, S. Rep. No. 580, 95th Cong., 1st Sess. 19, 20 (1977).

31 *Id.*

Disadvantages

Although cable system operators and telecommunications carriers must first attempt to negotiate rates, terms and conditions of attaching to a utility's poles, ducts, conduits and rights-of-way, in the event that negotiations are not successful, subpart J imposes certain transaction costs on the parties in order to successfully pursue and respond to the complaint driven rules. However, the process has been kept as simple and expeditious as possible to ensure that the burden on the parties is kept to a minimum.

Recent Efforts

In the Pole Fee Order[32] the Commission refined and clarified the formula used to calculate the maximum just and reasonable rate a utility may charge a cable service or telecommunications service provider for attachments to a pole, duct, conduit or right-of-way prior to February 8, 2001, and continuing for cable operators not providing telecommunications services after February 8, 2001. Petitions for reconsideration and/or clarification of this order are pending. In the Telecommunications Carrier Report and Order,[33] the Commission adopted a separate methodology for attachments by telecommunications service providers, including cable systems providing telecommunications services, after February 8, 2001, as mandated by section 224. Petitions for reconsideration and/or clarification of this order are pending. In the Local Competition Order,[34] the Commission enumerated guidelines concerning the reasonableness of certain terms and conditions of access. These guidelines were later modified and refined in the Local Competition Reconsideration Order.[35]

Recommendation

Subpart J is necessary to implement and enforce section 224 of the Communications Act. The complaint driven process encourages parties to negotiate and when applied, acts to prevent utilities from setting monopoly rates for infrastructure necessary to the competitive deployment of cable and telecommunications services. The necessity for these rules is increased by the influx of utilities entering the telecommunications field. In the last two years, the Commission has significantly revised and clarified subpart J in response to Congress' expansion and modification of section 224. The staff concludes that significant modification or repeal of the subpart J rules is not necessary at this time.

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[32] *In the Matter of Amendment of the Commission's Rules and Policies Governing Pole Attachments*, *Report and Order*, 15 FCC Rcd 6453 (2000).

[33] *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996*, *Report and Order*, 13 FCC Rcd 6777 (1998); *rev. in part, Gulf Power, et al., v. FCC*, 208 F.3d 1263 (11th Cir., rel. Apr. 11, 2000). Petitions for rehearing *en banc* have been filed by the Commission and intervenors.

[34] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, *First Report and Order*, 11 FCC Rcd 15499 (1996).

[35] *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996*, *Order on Reconsideration*, FCC 99-266 (rel. Oct. 26, 1999).

PART 1, SUBPART Q – COMPETITIVE BIDDING PROCEEDINGS

Description

Subpart Q implements section 309(j) of the Communications Act of 1934, as added by the Omnibus Budget Reconciliation Act of 1993[36] and the Balanced Budget Act of 1997.[37] Subpart Q sets forth rules governing the mechanisms and procedures for competitive bidding to award spectrum licenses.

Purpose

The purpose of subpart Q is to establish a uniform set of competitive bidding rules and procedures for use in licensing of all services that are subject to licensing by auction. The rules in this subpart: (1) specify which services are eligible for competitive bidding; (2) provide competitive bidding mechanisms and design options; (3) establish application, disclosure and certification procedures for short- and long-form applications; (4) specify down payment, withdrawal and default mechanisms.

In addition, subpart Q contains rules that define eligibility for "designated entity" (*i.e.*, small business) status, and includes a schedule of bidding credits for which designated entities may qualify in those auctions in which special provisions are made for designated entities.[38] The purpose of these provisions is to implement section 309(j)(3)(B) of the Act, which states that an objective of designing and implementing the competitive bidding system is to "promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration on licenses and disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women."[39]

Analysis

Advantages

The subpart Q competitive bidding rules establish procedures for the efficient licensing of spectrum. Use of auction procedures allows for substantially faster licensing than alternative licensing methods such as comparative hearings, and is more likely to result in award of licenses to those entities that value the spectrum the most and will use it most efficiently. Auction rules also enable the Commission to recover a portion of the value of the spectrum for the benefit of the public.

Subpart Q is the result of the Commission's consolidation of its auction rules in the Part 1 rulemaking proceeding (WT Docket No. 97-82). Prior to the Part 1 proceeding, the Commission implemented service-specific auction rules for each new auctioned service. Consolidating the auction rules in Part 1 has resulted in more consistency and predictability in the auctions process from service to service.

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[36] *See* Omnibus Budget Reconciliation Act of 1993, Pub. Law No. 103-66 (1993).

[37] *See* Balanced Budget Act of 1997, Pub. Law No. 105-33, § 3002, 111 Stat. 251 (1997) (amending 47 U.S.C. § 309(j)).

[38] In service-specific rule making proceedings, the Commission continues to establish the appropriate size standards for each auctionable service.

[39] 47 U.S.C. § 309(j)(3)(B).

Disadvantages

The auction rules in this subpart impose certain transaction costs on auction participants (aside from the obligation on the winning bidder to pay the amount bid). These include filing and reporting requirements, as well as the cost of maintaining staff and electronic resources to participate in auctions that may last several weeks or months. These auction-related costs may be somewhat higher than the cost of filing a lottery application. However, they also tend to discourage frivolous or speculative applications and are critical for ensuring the integrity of the auction process. In addition, certain aspects of the auctions process (*e.g.*, setting of minimum opening bid amounts, bid increments, and bidding credit levels) still require service-specific notice and comment prior to each individual auction. Nonetheless, the delays associated with this process are significantly less than those historically associated with licensing by lottery or hearing.

Recent Efforts

The Commission has made significant changes to the competitive bidding rules of subpart Q in recent years. The overall objectives of these competitive bidding rulemakings are: (1) consolidation of competitive bidding rules; and (2) the establishment of a uniform set of rules instead of a customized set of rules for each service. In the *Part 1 Third Report and Order*,[40] the Commission made substantive amendments and modifications to the competitive bidding rules for all auctionable services. These changes to the competitive bidding rules are intended to streamline regulations and eliminate unnecessary rules wherever possible, increase the efficiency of the competitive bidding process, and provide more specific guidance to auction participants. The changes also advance the auction program by reducing the burden on the Commission and the public of conducting service-by-service auction rule makings.

Recommendation

In general, the competitive bidding rules in this subpart are integral to the basic licensing and spectrum management functions performed by the Commission. The necessity for these rules is also not significantly affected by changes in the level of competition in the auctionable services. In addition, the Commission has significantly revised and streamlined the competitive bidding rules in this subpart in several proceedings. Therefore, the staff concludes that significant modification or repeal of the subpart Q rules is not necessary at this time.

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[40] *See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374 (1997) (modified by *Erratum*, DA 98-419 (rel. Mar. 2, 1998).

PART 1, SUBPART T – EXEMPT TELECOMMUNICATIONS COMPANIES

Description

Sections 1.5000 through 1.5007[41] implement provisions of the Telecommunications Act of 1996 by which a public utility holding company may obtain a determination from the Commission of status as an Exempt Telecommunications Company (ETC). By obtaining ETC status under these procedures, these firms become exempt from the "line of business" restrictions of the Public Utility Holding Company Act (PUHCA). Those restrictions, which are subject to regulation of the Securities and Exchange Commission, would otherwise preclude these firms from entering markets that are not related to the provision of public utility service.

Purpose

The purpose of these rules is thus to enable public utility holding companies to enter the telecommunications industry and thereby increase the number of possible entrants into this industry.

Analysis

The rules achieve the purpose in a very effective, streamlined way. Notably, under section 1.5004, if the Commission does not issue an order denying an ETC application within 60 days of receipt of the application, the application is deemed granted as a matter of law. Under section 1.5003, a person applying in good faith for a Commission determination of ETC status is deemed to be an ETC from the date of receipt of the application until the date of Commission action pursuant to section 1.5004. To implement these provisions, the Commission invites comments on each application under section 1.5007 and at the same time notifies the Securities and Exchange Commission under section 1.5005 that the Applicant is deemed to be an exempt telecommunications company. If the Commission receives comments warranting denial, it issues an order within 60 days of receipt of the application denying the application and notifies the SEC, but otherwise the Commission takes no further action to grant these applications.

Recommendation

Staff recommends that these rules be retained.

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[41] 47 C.F.R. §§ 1.5000-1.5007.

PART 2, SUBPART B – ALLOCATION, ASSIGNMENT, AND USE OF RADIO FREQUENCIES

Description

Section 303(c) of the Communications Act of 1934, as amended, gives the Commission authority to "assign bands of frequencies to the various classes of stations." Part 2, subpart B implements this authority and contains the Table of Allocations which identifies the services allowed for various frequency bands. The Table of Allocations is strongly influenced by the International Telecommunications Union's (ITU) Radio Regulations which contain an international allocation table and have the legal status of a treaty. The international allocations are noted for information purposes in the Table of Allocations.

Purpose

The Table of Allocations acts as a basic framework for the various service rules for each radio service. It also is the basic mechanism for coordinating with the National Telecommunications and Information Administration under section 305 of the Act to regulate stations operated by the federal government.

Analysis

Status of Competition

Not applicable: Part 2 subpart B does not regulate market entry or pricing.

Advantages

The Table of Allocations clearly sets out what radio services are permitted in each band and the primary or secondary status of each. As such users clearly can see what other classes of stations may enter their band or adjacent bands and what priority they have with respect to those uses.

Disadvantages

For some new radio technologies, a two-step process is needed to implement their use: first implementation of an allocation table change, and then adoption of service rules. We have addressed this problem at times in the past by combining the two steps in cases where speed was important and the issues were clear. Some types of new services also require changes in the ITU's Radio Regulations, but this step is a treaty requirement beyond FCC's control.

Recent Efforts

The allocation table is dynamic and is amended several times yearly to address new services and changes to existing services.

Recommendation

The staff recommends retaining the table in its current form and continuing the present procedure of incremental change as the need arises.

PART 3 – AUTHORIZATION AND ADMINISTRATION OF ACCOUNTING AUTHORITIES IN MARITIME AND MARITIME MOBILE-SATELLITE RADIO SERVICES.

Description

This rule part implements 47 U.S.C. 154(i), 154(j) and 303(r). Part 3 sets forth rules for authorizing, controlling and monitoring the issuance of accounting authority identification codes (AAIC). The rule places specific reporting requirements on authorized Accounting Authorities and addresses the Commission's enforcement policy. It also establishes rules, which monitor the business conduct of authorized Accounting Authorities.

At any given time, there are no more than 25 authorized accounting authorities with a minimum of 15 "US" AAICs reserved for use by the accounting authorities conducting settlement operations with the United States.

Accounting Authorities are responsible for settling accounts for pubic correspondence due to foreign administrations for messages transmitted at sea by or between maritime mobile stations located on board ships subject to U.S. registry and utilizing foreign coast and coast earth station facilities.

Purpose

These rules are intended to ensure that settlements of accounts for U.S. licensed ship radio stations are conducted in accordance with the International Telecommunications Regulations, taking into account the applicable ITU-T recommendations.

Analysis

Advantages

- Establishes and formalizes procedures for controlling the issuance of accounting authority identification codes.
- Establishes rules and guidance for administering accounting authority activities.
- Addresses ITU-T Recommendations
- Compliance with International Telecommunications Regulations.
- Implements specific reporting requirements
- Provides the opportunity for the Commission to privatize its own internal accounting authority activities.

Disadvantages

Administrative burden of monitoring the activities of private accounting authorities.

Recent Efforts

The International Bureau (IB) is currently drafting a *Further Notice of Proposed Rule Making* (*FNPRM*) which, among other things, considers privatizing the role currently performed by USO1. USO1 is the Commission's internal accounting authority. OMD's International Telecommunications Settlements Group administers the settlement activities for USO1. The group is located in Gettysburg, Pennsylvania. For

years USO1 has handled all communications traffic, not otherwise contracted with one of the interim accounting authorities. With the implementation of Part 3 and the adoption of rules proposed in the pending *FNPRM*, the Commission plans to get out of the business of settling maritime accounts. Focus would then be placed on administering and monitoring the activities of authorized accounting authorities.

Recommendation

Recommend the entire rule part stand as written, pending IB completion of its current rule making to privatize the Commission's internal accounting authority (USO1).

PART 15 RADIO FREQUENCY DEVICES

Description

Section 302 of the Communications Act of 1934, as amended, gives the Commission authority to regulate devices which may interfere with radio reception and requires the Commission to adopt regulations forbidding the sale of equipment capable in intercepting domestic cellular radio telecommunications service.

Purpose

The purpose of Part 15 is to provide technical guidance regarding radio devices, including prevention of interference, prohitions on cellular transmission and reception interception, and requirements for television receivers and V chips.

Analysis

Status of Competition

The markets affected by Part 15 are competitive.

Advantages

The requirements of Part 15 are clear and competitively neutral.

Disadvantages

The requirements impose some regulatory costs on equipment in both having to be designed to comply and having to show compliance. The required approvals slow market entry slightly.

Recent Efforts

The Part 15 rules are continually revised to address evolving technology.

Recommendation

The staff recommends several specific changes to Part 15:

- Incorporate the new ANSI C63.4 test procedure for unlicensed PCS systems to remove certain present ambiguities
- Amend rules to establish conditions under which intentional transmitter modules can be authorized and then incorporated into larger units without addition equipment authorization.
- Review emission standards above 2 GHz to adjust in view of changes in licensed services at these frequencies.
- Amend 15.231 to permit data transmission by intermittent unlicensed transmitters permitted by this rule.

PART 17 – CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURES

Description

Part 17[42] sets forth the procedures by which the Commission registers and assigns painting and lighting requirements to those antenna structures that may pose a physical hazard to aircraft. These procedures implement section 303(q) of the Communications Act of 1934, as amended.[43] The rules require registration, evaluation and approval by the Commission, in conjunction with the recommendations of the Federal Aviation Administration (FAA), of any proposed construction or modification of an antenna structure that is a potential hazard to aircraft. The rules also require tower owners to paint and light their antenna structures as necessary to protect air navigation.

The Antenna Structure Registration procedures set forth in Part 17 are distinct from the FCC's licensing functions. The registration of an antenna structure that affects air navigation is a pre-condition to FCC licensing of radio facilities at a particular site.

Purpose

The purpose of Part 17 is to insure that tower owners do not construct structures that may pose a hazard to air navigation (and FCC licensees do not site facilities on such structures) unless and until the antenna structures comply with federal aviation safety requirements.

Analysis

Advantages

The Part 17 rules implement section 303(q) of the Communications Act of 1934, as amended, and provide critical safety-of-life functions by insuring that antenna structures hosting FCC licensees are sufficiently conspicuous to aircraft. The rules are limited to those classes of antenna structures that may reasonably be expected to pose an air safety hazard (generally, antenna structures that are taller than 200 feet or that are in close proximity to airports) and, therefore, that must be individually examined in conjunction with the FAA. Antenna structure owners are responsible for compliance with the rules, which allows for a single point of contact for a particular antenna structure and which eliminate the need for each party on a multi-tenant structure to undertake the registration process.

Disadvantages

The Part 17 rules impose an additional regulatory cost on antenna structure owners. Because proposed facilities that meet the registration criteria must be studied by the FAA and registered by the Commission prior to construction, an owner who is unable to allocate sufficient time for this process risks delaying a licensee's ability to obtain an authorization for, and to begin service from, individual antenna structures.

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[42] 47 C.F.R. Part 17.

[43] 47 U.S.C. § 303(q).

Recent Efforts

The Commission's antenna structure registration program was substantially revised in 1995.[44] In a March 2000 *Memorandum Opinion and Order on Reconsideration*, the Commission reaffirmed the antenna structure registration procedures adopted in 1995, but clarified several rules.[45] In addition, the Commission has updated individual radio service rules during the course of rulemaking proceedings in order to cross-reference the Part 17 Rules.[46]

Recommendation

In general, the rules in this part are critical to the safety-of-life duties required by the section 303(q) of the Communications Act of 1934, as amended. In addition, the Commission recently reaffirmed the antenna structure clearance process. Accordingly, the staff concludes that it is unnecessary to significantly restructure or repeal the Part 17 rules at this time. However, the staff has identified some rules that it believes could be modified or eliminated without compromising the public safety goals embodied in this rule part. These rules are either duplicative or inconsistent with the procedures antenna structure owners must undertake when notifying the FAA,[47] create unnecessary administrative burdens on antenna structure owners,[48] or are apt to confuse owners and licensees who attempt to comply with our Part 17 rules.[49]

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[44] *Streamlining the Commission's Antenna Structure Clearance Procedure, Report and Order*, 11 FCC Rcd 4272 (1995).

[45] *Streamlining the Commission's Antenna Structure Clearance Procedure, Memorandum Opinion and Order on Reconsideration*, FCC 00-76 (rel. Mar. 8, 2000).

[46] *See, e.g.*, 47 C.F.R. § 1.923(d) (adopted in *Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, Report and Order*, 13 FCC Rcd 21027 (1998)).

[47] 47 C.F.R. §§ 17.6(c) (duplicates procedures described in 17.4(e)); 17.23 (should reflect version 1K of the FAA advisory circular); 17.45 (because the applicable FAA advisory circular will specify the appropriate temporary warning lights, these provisions may be in conflict); 17.48 (telegraph notification is no longer acceptable); 17.53 and 17.54 (technical specifications duplicates those specifications incorporated by reference to the FAA advisory circulars).

[48] 47 C.F.R. §§ 17.4(b), (d) (submission of paper copy of FAA study no longer necessary); 17.57 (notification is now made via FCC Form 854); 17.58 (Commission previously determined that there is no longer a basis for this reporting requirement).

[49] 47 C.F.R. §§ 17.24-43, associated section headings and notes (there is no need to retain these reserved sections and headings); 17.4(g) and 17.49 (posting and logging requirements have caused confusion); 17.22 (should say that specified painting and lighting will be printed on the registration document); 17.56 ("as soon as practical" time frame is too indefinite); and 17.57 (specify which "owner" should file in a change of ownership situation).

PART 20 – COMMERCIAL MOBILE RADIO SERVICES, SECTION 20.6 – CMRS SPECTRUM AGGREGATION LIMIT

Description

Section 20.6[50] limits the amount of broadband PCS, cellular, and SMR spectrum that any entity can hold in a common geographic area. The rule further defines the types of ownership and other interests that are attributable under the cap. The cap was adopted in 1994,[51] and modified in 1999 (see discussion below).[52]

Purpose

The purpose of section 20.6 is to promote competition in the broadband CMRS market by preventing any wireless carrier from gaining undue market power or restricting entry through the accumulation of CMRS spectrum.

Analysis

Advantages

The spectrum cap minimizes potential for anti-competitive behavior by avoiding excessive concentration of licenses, and ensures that licenses are distributed among a wide variety of applicants. By applying a bright-line test to spectrum aggregation, the rule also reduces transaction costs associated with case-by-case review of such transactions.

Disadvantages

By restricting aggregation of spectrum, the spectrum cap may limit economies of scale or scope that could otherwise be achieved by carriers subject to the cap. The rule also potentially limits carriers' ability to provide new services to the extent such services require more spectrum resources than the cap allows.

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50 47 C.F.R. § 20.6.

51 *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool, Third Report and Order,* 9 FCC Rcd 7988, 7992 (1994).

52 *1998 Biennial Regulatory Review, Spectrum Aggregation Limits for Wireless Telecommunications Carriers, Cellular Telecommunications Industry Association's Petition for Forbearance From the 45 MHz CMRS Spectrum Cap, Amendment of Parts 20 and 24 of the Commission's Rules – Broadband PCS Competitive Bidding and Commercial Mobile Radio Service Spectrum Cap, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Report and Order*, 15 FCC Rcd 9219 (1999).

Recent Efforts

On September 15, 1999, the Commission adopted a *Report and Order* that retained the spectrum cap, with some modifications.[53] The Commission maintained the original 45 MHz cap for most areas, but increased the cap to 55 MHz for rural areas. In addition, the Commission adopted a separate benchmark for the spectrum cap of 40 percent equity ownership by passive institutional investors. The Commission also established a waiver mechanism for carriers who can demonstrate that strict application of the cap will impair their ability to provide 3G or other innovative services. The Commission stated in the *Report and Order* that while it was retaining the cap, it would further consider in the 2000 Biennial Regulatory Review whether the cap should be retained, repealed, or modified.[54]

Several carriers filed petitions for waiver or forbearance with respect to application of the spectrum cap to the upcoming C and F Block auction scheduled for November 2000. On August 29, 2000, the Commission issued the *Sixth Report and Order and Order on Reconsideration* in WT Docket No. 97-82, which held that the spectrum cap would apply to the C and F Block auction.[55]

Recommendation

As noted above, the Commission has stated that the spectrum cap will be reviewed as part of the 2000 Biennial Regulatory Review. The staff plans to prepare a Notice of Proposed Rulemaking for Commission consideration later this year.

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53 *Id.*

54 *Id.* at 25-26.

55 *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Sixth Report and Order and Order on Reconsideration*, FCC 00-313 (rel. Aug. 29, 2000).

PART 20, SECTION 20.11 – INTERCONNECTION TO FACILITIES OF LOCAL EXCHANGE CARRIERS

Description

Section 20.11[56] provides that local exchange carriers (LECs) must provide reasonable interconnection to commercial mobile radio service (CMRS) providers on request, and that LECs and CMRS providers must each reasonably compensate the other for terminating traffic that originates on their respective facilities. This rule codifies section 332(c)(1)(B) of the Act,[57] which was enacted by Congress as part of the Omnibus Budget Reconciliation Act of 1993.[58] Section 20.11 was adopted in 1994 in the *CMRS Second Report and Order* in GN Docket No. 93-252.[59]

In the Telecommunications Act of 1996, Congress added sections 251 and 252 to the Communications Act. These statutory provisions establish interconnection rights among all telecommunications carriers, and set forth terms and conditions under which interconnection must be provided by one carrier to another.[60] While enacting sections 251 and 252, Congress also left section 332(c)(1)(B) of the Act intact. In the 1996 *First Local Competition Order*, the Commission codified new interconnection rules in Part 51 as part of its implementation of sections 251 and 252.[61] The Commission also concluded that in light of Congress' retention of section 332(c)(1)(B), the Commission retained separate authority over LEC-CMRS interconnection pursuant to that section.[62] Because the Commission viewed sections 251, 252, and 332 of the Act as furthering a common goal with respect to interconnection, the Commission declined at that point to further act on or define the scope of its section 332 interconnection authority, but instead amended section 20.11 to require that LECs and CMRS providers comply with the interconnection rules in Part 51.[63]

Section 20.11 is organized into three lettered sub-parts: Subsection (a) requires LECs to provide the type of interconnection requested by mobile radio service providers, within reason. Subsection (b) requires LECs and CMRS providers to reasonably compensate each other for terminating traffic that originates on each other's facilities. Subsection (c) requires LECs and CMRS providers to comply with the Part 51 interconnection rules.

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56 47 C.F.R. § 20.11.

57 47 U.S.C. § 332(c)(1)(B).

58 *See* 47 U.S.C. § 332.

59 *See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411 (1994) (*Second Report and Order*).

60 *See* 47 U.S.C. §§ 251, 252.

61 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-68, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, 16195 (1996) (*Local Competition First Report and Order*).

62 *Local Competition First Report and Order* at ¶ 1023.

63 47 C.F.R. § 20.11(c). *See also Local Competition First Report and Order* at 16195.

Purpose

The purpose of the LEC-CMRS interconnection rule is to promote competition in the telecommunications market by ensuring that all LECs and CMRS providers provide reasonable interconnection to one another subject to reasonable rates, terms, and conditions. The rule is particularly directed to regulating the conduct of LECs with market power in their interconnection relationships with CMRS providers. Historically, some LECs denied or restricted interconnection options available to CMRS providers, or required CMRS providers to compensate the LEC for LEC-originated traffic that terminated on the CMRS provider's network. Congress enacted section 332(c)(1)(B), and the Commission adopted section 20.11 codifying this provision, in order to curtail such practices.

Analysis

Advantages

Section 20.11 sets forth basic requirements for reasonable and nondiscriminatory interconnection arrangements between LECs and CMRS providers, but does not impose detailed standards or technical requirements. Thus, it reduces the potential for anti-competitive behavior, while affording carriers reasonable flexibility with respect to the terms and conditions of interconnection so long as the basic requirements of the rule are adhered to.

Disadvantages

Section 20.11 imposes certain transaction costs on carriers to ensure that their interconnection arrangements comply with the rule, and may lead to disputes and litigation between carriers about what constitutes "reasonable" interconnection under the rule. In addition, the overlap between this rule and the Part 51 interconnection rules may cause some duplication of regulatory requirements.

Recent Efforts

Since the addition of subsection (c) in 1996, section 20.11 has not been revised. In February 2000, Sprint PCS filed an analysis of CMRS traffic-sensitive costs of terminating local calls originating on LECs' networks, and requested the Commission to consider rules that would mandate recovery of such costs. [64] The Commission has sought comment on Sprint's filing.[65] The issue is still pending review.

Although section 20.11 has not been judicially challenged, the related Part 51 rules continue to be the subject of litigation. On July 18, 2000, on remand form the Supreme Court, the Eighth Circuit vacated portions of the FCC's forward-looking pricing methodology, proxy prices, and wholesale pricing provisions.[66] To the extent that section 20.11 requires compliance with Part 51, this litigation affects carriers' obligations under both sets of rules.

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[64] Letter from Sprint Spectrum L.P., d/b/a Sprint PCS, to Thomas J. Sugrue, (filed Feb. 2, 2000).

[65] *See Comment Sought on Reciprocal Compensation for CMRS Providers, Public Notice*, CC Docket Nos. 96-98, 95-185, and WT Docket No. 97-207 (rel. May 11, 2000).

[66] *See Iowa Utilities Board v. F.C.C*, (8th Cir. July 18, 2000).

Recommendation

The staff recommends retaining section 20.11. Although there is some overlap with the interconnection requirements of Part 51, retention of the rule is appropriate in light of the fact that Congress has retained the separate statutory provision in section 332 governing LEC-CMRS interconnection.

PART 20, SECTION 20.12 – RESALE AND ROAMING

[Note: Section 20.12 addresses two distinct issues: resale and roaming. This analysis deals with each separately.]

RESALE

Description

Section 20.12(b)[67] provides that any carrier of Broadband PCS, Cellular Radio Telephone Service, or Specialized Mobile Radio (SMR) Services that offers real-time, two-way interconnected voice service with switching capability ("covered CMRS provider") must permit unrestricted resale of its services. The resale rule was adopted in 1996 in the *First Report and Order* in CC Docket No. 94-54.[68]

Section 20.12(b) further provides that the resale provision will cease to be effective five years after the date of the award of the last group of initial licenses for broadband PCS. The Commission has since determined the last PCS award date for purposes of this rules was November 25, 1997. Therefore, the resale rule is set to expire on November 24, 2002.[69] However, resale arrangements will continue to be subject to the non-discrimination and reasonableness requirements of sections 201 and 202 of the Communications Act[70] after that date.

Purpose

The purpose of the resale rule is to promote competition in the wireless telephony market by preventing facilities-based covered CMRS carriers from restricting resale of their services. The rule is particularly directed to promoting competition during the period that broadband PCS providers are building out their facilities-based networks to compete with incumbent cellular carriers. The Commission has concluded that by November 2002, PCS buildout should be sufficient to obviate the need for the rule.[71]

Analysis

Status of Competition

As described in the *Fifth Competition Report*, the broadband PCS sector has engaged in significant buildout in recent years.[72] However, broadband PCS has not yet achieved full parity with cellular as a facilities-based competitor. The *Fifth Competition Report* also notes that PCS providers have yet to

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67 47 C.F.R. § 20.12(b).

68 *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, First Report and Order*, 11 FCC Rcd 18455 (1996) (*CMRS Resale Order*).

69 *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 16340 (1999) (*CMRS Resale Reconsideration Order*).

70 47 U.S.C. §§ 201, 202.

71 *Id.*

72 *Fifth Competition Report*, *supra*, at 28-29.

achieve the same level of geographic coverage or subscribership as cellular, particularly in smaller markets.[73]

Advantages

The resale rule provides a "bright-line" test that minimizes potential for anti-competitive behavior. By prohibiting CMRS carriers from any restrictions on resale, the rule ensures no carrier may offer like communications services to a reseller at less favorable prices, or on less favorable terms or conditions, than are available to similarly situated customers.

Disadvantages

The resale rule imposes administrative costs on facilities-based carriers associated with negotiating and entering into resale agreements, resolving disputes with resellers, and litigation of compliance issues. The rule also may impose technical costs associated with accommodating resellers on facilities-based networks and billing of resale service.

Recent Efforts

In response to petitions for reconsideration of the *CMRS Resale Order*, the Commission recently conducted a comprehensive review of the resale rule. In the *CMRS Resale Reconsideration Order*, adopted on September 15, 1999, the Commission rejected arguments that the rule should be repealed immediately, and determined that retaining the rule (with minor modifications) until the November 2002 sunset date would best promote competition and balance the costs and benefits of the rule.[74]

Recommendation

In light of the Commission's recent comprehensive review of the resale rule, discussed above, the staff finds no need to make further recommendations at this time. The staff recommends that the Commission continue to evaluate the resale rule in light of competitive conditions in the CMRS market sector.

ROAMING

Description

Roaming occurs when the subscriber of one CMRS provider utilizes the facilities of another CMRS provider with which the subscriber has no direct pre-existing service or financial relationship to place an outgoing call, to receive an incoming call, or to continue an in-progress call. Roaming can be done "manually," in which a subscriber establishes a relationship with the host carrier usually by providing a credit card number, or "automatically," in which the subscriber does nothing more than turning on her telephone. Automatic roaming requires a contractual agreement between the respective carriers.

Section 20.12(c)[75] provides that any "covered CMRS" carrier must provide mobile radio service upon request to any subscriber in good standing, including roamers, while the subscriber is within any portion of the licensee's licensed service area, and assuming that the subscriber is using technically compatible mobile

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73 *Id* at 29.

74 *CMRS Resale Reconsideration Order at 69*.

75 47 C.F.R. § 20.12(c).

equipment. The rule only mandates that carriers offer manual roaming, and does not require provision of automatic roaming. The rule was adopted in 1996.[76]

Purpose

The purpose of the roaming provision is to ensure seamless service to wireless customers who roam out of their home service areas, and to prevent carriers from restricting competition and consumer choice through refusal to provide service to roamers.

Analysis

Status of Competition

Most cellular carriers have reached automatic roaming agreements among themselves, even though section 20.12 only mandates manual roaming. Carriers such as AT&T, Nextel, and Verizon have also developed nationwide "footprints" and wide-area calling plans that give their customers the ability to receive service outside their local area without paying roaming charges. However, some local and regional carriers have alleged that they have been unable to enter into roaming agreements with competing carriers. Consumers' ability to roam may also be limited because they can only roam on networks that use the same technical standard (CDMA, TDMA, GSM, Iden) as the home carrier.

Advantages

The roaming rule provides a clear baseline standard for carriers to follow with respect to the provision of roaming. It is also minimally intrusive because it does not require CMRS carriers to reconfigure their systems to support technically incompatible roaming.

Disadvantages

Manual roaming obligations impose some administrative and technical burdens associated with caller verification, billing, and similar issues.

Recent Efforts

At the time that it adopted the manual roaming rule, the Commission also issued a *Third Notice of Proposed Rulemaking* in CC Docket 94-54 on (1) whether to sunset the manual roaming rule, and (2) whether to mandate automatic roaming for any carriers.[77] On August 28, 2000, the Commission released a *Third Report and Order and Memorandum Opinion and Order on Reconsideration*, in which it affirmed the existing manual roaming rule, with some modification and clarification.[78] The Commission also concluded that in light of technological advances and the rapid expansion of the CMRS market since the 1996 Roaming order, a new rulemaking proceeding should be initiated to address the impact of these

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[76] *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Report and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd 9462 (1996) (*CMRS Roaming Order*).

[77] *Id.*

[78] *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Third Report and Order and Memorandum Opinion and Order on Reconsideration*, FCC 00-251 (adopted July 13, 2000; released August 28, 2000).

developments on issues relating to both automatic and manual roaming. The Commission stated that it would initiate such a proceeding in the near future.

Recommendation

The staff recommends that issues relating to whether to retain, eliminate, or sunset the roaming rule be addressed in the upcoming rulemaking proceeding.

PART 20, SECTION 20.18 – 911 SERVICE

Description

Section 20.18[79] requires certain broadband CMRS providers (delineated in subpart (a) of this rule) to comply with guidelines set by the Commission for the implementation of Enhanced 911 services (E911) for all of their customers, including those customers requiring TTY devices.

Section 20.18 was adopted in 1996 in CC Docket No. 94-102.[80] The rule provides for implementation of E911 in two phases. In Phase I, CMRS carriers must implement E911 capability in their networks that will provide 911 dispatchers with a callback number as well as the location of the cell site that received the call, which will enable the dispatcher to estimate the caller's whereabouts. In Phase II, carriers must provide Automatic Location Identification (ALI) capability for all 911 calls placed by wireless telephone users, so that the caller's location can be determined with greater accuracy.

The rule provides for implementation of Phase I by April 1, 1998. In Phase II, licensees who employ network-based solutions must provide service to at least 50 percent of their coverage area or their population by October 1, 2001, and licensees employing handset-based technologies must ensure that at least 50 percent of all new handsets activated are location-capable by October 1, 2001.[81] Section 20.18 further describes who must comply with E911 requirements, the basic E911 service that CMRS carriers must provide, as well as the accuracy percentage and timeframe in which these services must be deployed. Finally, the rule provides alternative requirements for carriers who choose to employ an intermediary dispatcher rather than routing their customers' 911 calls directly to a Public Safety Answering Point (PSAP).

Purpose

The purpose of section 20.18 is to enhance public safety and facilitate effective and efficient law enforcement. Without E911 services, a dispatcher receiving a wireless 911 call can only obtain information regarding the caller's location and callback number if the caller is able to provide it. This contrasts to certain advanced features that are available to wireline 911 customers. By mandating that public safety service providers have the ability to locate wireless callers instantly and accurately, section 20.18 rule attempts to provide the same reliable and ubiquitous aid to wireless 911 callers that is available to wireline callers.

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[79] 47 C.F.R. § 20.18.

[80] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676 (1996).

[81] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Third Report and Order*, 14 FCC Rcd 17388, 17436 (1999) (*Third Report and Order*).

Analysis

Advantages

The E911 rule sets national standards and deadlines to ensure that all CMRS carriers throughout the U.S. will provide E911 services in a timely manner. This encourages equipment manufacturers and CMRS carriers to take public safety into consideration in the design and production of equipment and the provision of service. At the same time, the rule is technologically and competitively neutral, which allows carriers and equipment manufacturers to make their own decisions as to the best method for implementing E911 capability. Allowing manufacturers and carriers to adopt the technology of their choice also lowers costs and fosters technological innovation, because it encourages the parties to arrive at a solution that is both effective and cost-efficient. Finally, because section 20.18 clearly delineates CMRS provider's obligations as to E911 services and ALI compatibility, the FCC can easily determine which carriers have failed to comply with the mandate and are not providing sufficient E911 services.

Disadvantages

The E911 rule imposes administrative, technical, and economic costs on carriers who must reconfigure their networks to comply with the rule.

Recent Efforts

The Commission has been considering waiver requests from CMRS providers to extend the deadlines for implementation in order to reflect and recognize new technologies whose implementations cannot be completed in the allotted timeframe. On September 8, 2000, the Commission issued a *Fourth Memorandum Opinion and Order* in the E911 proceeding, in which it (1) extended from October 1, 2000 to November 9, 2000, the date for carriers to file E911 Phase II implementation reports; (2) extended the deadline for carriers to begin selling and activating ALI-capable handsets from March 1, 2001 to October 1, 2001; (3) adopted a revised phase-in schedule for deployment of ALI-capable handsets; and (4) extended from December 31, 2004, to December 31, 2005, the date for carriers to reach full penetration of ALI-capable handsets in their total subscriber bases.[82] The Commission also granted a limited waiver of the accuracy standards toVoiceStream Wireless to permit it to deploy a "hybrid" location solution, subject to a timetable that will require it to deploy ALI-capable handsets faster than the timetable originally set forth in the *Third Report and Order*, and substantially faster than the revised timetable adopted in the current Order.

Recommendation

Due to the crucial role that the E911 rule plays in upholding and enhancing public safety, the staff recommends that this rule be retained. While E911 requirements impose a burden on CMRS providers, the necessity of providing sufficient E911 services for callers in need outweighs this burden. The staff recommends that Commission continue to review the rule as implementation of E911 progresses.

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[82] *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Fourth Memorandum Opinion and Order*, FCC 00-326 (adopted August 24, 2000; released September 8, 2000).

PART 20, SECTION 20.20 – CONDITIONS APPLICABLE TO PROVISION OF CMRS SERVICE BY LOCAL EXCHANGE CARRIERS

Description

Section 20.20[83] requires incumbent LECs (ILECs) providing in-region broadband CMRS to provide such services through a separate affiliate. The rule further imposes restrictions on the separate affiliate, including: (1) maintaining separate books of account; (2) not jointly owning transmission or switching facilities with the affiliated ILEC that the ILEC uses for the provision of local exchange services in the same market; and (3) acquiring any services from the affiliated ILEC on a compensatory arm's length basis pursuant to our affiliate transaction rules.[84] Additionally, Title II common carrier services, or services, facilities or network elements provided pursuant to sections 251 and 252, that are acquired from the affiliated ILEC must be available to all other carriers, including CMRS providers, on the same terms and conditions. Furthermore, all transactions between the ILEC and the cellular affiliate must be reduced to writing, and a copy of all such agreements (other than interconnection agreements) must be available for inspection upon reasonable request by the Commission.

Rural ILECs are exempt from the separate affiliate requirement. A competing CMRS carrier interconnected with the rural telephone carrier may petition the Commission to remove the exemption where the rural telephone company has engaged in anti-competitive conduct. Small-and mid-sized ILECs serving fewer than two percent of the nation's subscriber lines are entitled to petition the Commission for suspension or modification of the separate affiliate requirement.

Section 20.20 was adopted in 1997 in WT Docket No. 96-162.[85] The rule became effective on February 11, 1998. Section 20.20(f)[86] provides that the rule will sunset on January 1, 2002.

Purpose

The purpose of the ILEC/CMRS separate affiliate requirement is to prevent ILECs from using their market power in the local exchange market to engage in anti-competitive practices in the CMRS market.

Analysis

Advantages

The separate affiliate rule promotes competition by requiring transparency and arm's length transactions between ILECs and their CMRS affiliates, and by ensuring that ILECs cannot offer their CMRS affiliates more favorable terms and conditions than they offer to unaffiliated competing CMRS providers. The rule also provides greater flexibility for rural, small, and mid-sized ILECs, where there is less risk of the ILEC having sufficient market power to restrain CMRS competition.

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83 47 C.F.R. §20.20.

84 47 C.F.R. §20.20(a).

85 *Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, Report and Order*, 12 FCC Rcd 15668 (1997).

86 47 C.F.R. §20.20(f).

Disadvantages

By requiring use of a separate affiliate for CMRS operations, separate ownership of certain facilities, and written, arms-length transactions between ILECs and their CMRS affiliates, section 20.20 increases transaction costs for carriers subject to the rule.

Recent Efforts

The Commission has recently denied petitions for reconsideration of the separate affiliate requirements in section 20.20.[87]

Recommendation

In light of the Commission's recent orders on reconsideration of the separate affiliate rule, and the fact that the rule is scheduled to sunset on January 1, 2002, the staff does not recommend any changes to section 20.20 at this time. The staff will continue to evaluate whether the competitive conditions in the local exchange market merit continued application of the rule.

[87] *Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, First Order on Reconsideration*, 14 FCC Rcd 11343 (1999) (denying petition Independent Telephone and Telecommunications Alliance (ITTA); *Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, Second Order on Reconsideration*, 15 FCC Rcd 414 (1999) (denying petitions of Aliant Communications Co. and Guam Cellular and Paging, Inc.).

PART 21— DOMESTIC PUBLIC FIXED RADIO SERVICES

Description

Statutory authority for Part 21 of the Commission's rules is found in Titles I through III of the Communications Act of 1934, as amended. The purpose of the rules and regulations in Part 21 is to prescribe the manner in which portions of the radio spectrum may be made available for domestic communication common carrier and multipoint distribution service non-common carrier operations which require transmitting facilities on land or in specified offshore coastal areas within the continental shelf.

Part 21 is organized into seven lettered sub-parts (excluding reserved subparts):

A – General
B – Applications and Licenses
C – Technical Standards
D – Technical Operation
E – Miscellaneous
F – Developmental Authorizations
G-J – [Reserved]
K – Multipoint Distribution Service

Purpose

Part 21 is intended to ensure that licensees are financially and technically qualified to provide service in a manner that will not create interference with authorized transmissions. The procedures prescribed in Part 21 are designed to provide the Commission and the public with adequate information regarding licensees, prospective licensees, facilities, and proposed changes in facilities or in the ownership or control of licensees. Finally, the rules are intended to promote efficient use of the radio spectrum and to encourage innovation in communication services, equipment, and techniques.

Analysis

Status of Competition

Part 21 licensees provide video programming in competition with cable television systems, broadcast television stations, direct broadcast satellite systems, and other multichannel video programming distributors. *See Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, 15 FCC Rcd 978 (2000). In addition, as a result of the Commission's decisions in its *Two-Way Rulemaking*,[88] Part 21 licensees now may offer two-way broadband transmission services in competition with numerous wireline and wireless service providers. *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability*, 14 FCC Rcd 2398, 2422-31 (1999).

Advantages

Part 21 licenses are awarded through a competitive bidding process, which creates an incentive for rapid deployment of services and, thus, promotes efficient use of the radio spectrum. The technical standards in

[88] *Two-Way Rulemaking*, 13 FCC Rcd 19112 (1998), *recon.*, 14 FCC Rcd 12764 (1999), *further recon.*, FCC No. 00-244 (rel. July 21, 2000).

Part 21 ensure interference protection and promote effective use of proposed and authorized facilities. The Part 21 rules further benefit the public by affording access to information regarding licensees, prospective licensees, facilities, and proposed changes in facilities or in the ownership or control of licensees. Such access also reduces the cost of enforcing Commission rules by facilitating analysis by interested parties, thereby supplementing Commission review and enforcement efforts. Finally, Part 21 promotes innovation through the availability of developmental authorizations for technical experimentation.

Disadvantages

Part 21 contains language and requirements that have been superseded by recent Commission rulemakings.

Recent Efforts

The Commission's decisions in its *Two-Way Rulemaking*, cited *supra*, allow Part 21 licensees to use their assigned frequencies to provide two-way communication services and to alternate between providing service on a common carrier or non-common carrier basis. Recent changes in the Part 21 attribution rules encourage investment in Part 21 services by relaxing ownership restrictions. *Attribution of Broadcast and Cable/MDS Interests*, 14 FCC Rcd 12559 (1999).

Recommendation

The Staff recommends that Part 21 be reviewed to ensure consistency with recent Commission rulemakings.

PART 22 – PUBLIC MOBILE SERVICES

Description

Part 22[89] contains licensing, technical, and operational rules for five commercial mobile radio (CMRS) services historically described as "Domestic Public Land Mobile Radio Services" or "DPLMRS." These services are the Paging and Radiotelephone Service, the Cellular Radiotelephone Service, the Rural Radiotelephone Service, the Air-Ground Radiotelephone Service, and the Offshore Radiotelephone Service. Although these services differ in matters such as the allocated frequency bands, historical licensing methods, and technologies used, the common purpose of all of them is to make it possible for competing carriers to offer wireless mobile and/or fixed telecommunications services (especially paging and telephone service) to the public on a commercial basis. In general, the rules in this part: (1) specify the frequency bands allocated to each service; (2) provide methods for determining the protected service area of stations in each service; (3) establish minimum construction or coverage requirements for licensees; and (4) define technical limits on operation (*e.g.*, transmitter power) to reduce the likelihood of interference.

Part 22 comprises 10 subparts:

Subpart A - Scope and Authority
Subpart B - Licensing Requirements and Procedures
Subpart C - Operational and Technical Requirements
Subpart D - Developmental Authorizations
Subpart E - Paging and Radiotelephone Service
Subpart F - Rural Radiotelephone Service
Subpart G - Air-Ground Radiotelephone Service
Subpart H - Cellular Radiotelephone Service
Subpart I - Offshore Radiotelephone Service
Subpart J - Required New Capabilities Pursuant to the Communications Assistance for Law Enforcement Act (CALEA)

Subparts A, B, and C apply generally to all Part 22 licensees. Subpart D provides for the licensing on a developmental basis of stations that are to be used for testing new technologies or services. Each of the next five subparts (subparts E through I) contains rules applicable to one of the five specific Part 22 services. Finally, subpart J implements the provisions of the Communications Assistance for Law Enforcement Act (CALEA) as they apply to Part 22 services.

Purpose

Part 22 of the Commission's rules comprises a minimal regulatory framework that facilitates the rapid, efficient provision of commercial wireless telecommunications services to the general public at reasonable rates, by: (1) utilizing a competitive bidding process to issue exclusive licenses to the service provider applicants who value them most; (2) preserving and enhancing competition between these service providers once licensed; (3) ensuring that available spectrum allocations are used efficiently; and (4) reducing the likelihood of harmful interference between licensed stations.

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89 47 C.F.R. Part 22.

Analysis

Status of Competition

As detailed in the *Fifth Competition Report*, CMRS providers, including those licensed under Part 22, operate in an environment that is marked by significant and increasing competition in mobile telephony, paging/messaging, and mobile data.[90] The only Part 22 radio service that is not experiencing an increase in competition at this time is the Air-Ground Radiotelephone Service, where there are currently only two remaining licensees, GTE Airphone and ATT Claircom, of the six that were originally licensed.

Advantages

Overall, the Part 22 rules provide a clear, predictable structure for the assignment and use of spectrum. In Part 22, provision for accepting competing mutually exclusive applications and selecting the licensee by means of competitive bidding results in licenses being issued to the entities that value them the most. Geographic area licensing minimizes the amount of paperwork involved in obtaining a license and thus speeds the authorization of new competitive services to the public. Minimal and flexible technical standards facilitate the introduction of new technologies.

Disadvantages

The Part 22 rules impose administrative burdens inherent to the licensing process and to compliance with technical and operational rules. In addition, the flexible technical standards in most Part 22 services place the burden of coordination to avoid and resolve harmful interference between systems largely on the licensees themselves, which may increase transaction costs. Finally, while certain portions of the Part 22 rules have been recently revamped, other portions, most notably the cellular rules in subpart H, are now more than a decade old, and therefore may not appropriately reflect significant technological and competitive changes that have occurred in wireless services in recent years.

Recent Efforts

The Commission has made significant changes to its Part 22 rules in recent years. For example, in the Universal Licensing proceeding, the Commission eliminated many of the service-specific licensing rules in Part 22 as part of its consolidation of all wireless licensing rules into Part 1.[91] The Commission also recently completed a comprehensive overhaul of its paging rules, in which it finalized the rules for the transition from site-by-site to geographic licensing and award of geographic paging licenses by auction.[92]

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[90] *Fifth Competition Report, supra* at 9-27, 36-63.

[91] *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, Report and Order*, 13 FCC Rcd 21027 (1998); *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11145 (1998).

[92] *In the Matter of Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems and Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030 (1999) (*Paging Systems*

Recommendation

Many of the rules in Part 22 are integral to the basic spectrum management functions of the Commission. The necessity for these rules is not significantly affected by changes in the level of competition in wireless services. Moreover, as noted above, the Commission has significantly revised and streamlined portions of the Part 22 rules in recent proceedings. However, Part 22 also contains a number of relatively old rules, particularly rules applicable to cellular service, that were adopted when wireless technology and competitive conditions were very different from the present day. For example, section 22.937,[93] which requires demonstration of a cellular applicant's financial qualifications, was adopted in connection with the use of lotteries to award licenses, which has been superseded by the use of competitive bidding. Similarly, section 22.323[94] allows Part 22 licensees to provide "incidental" fixed services, but prohibits cross-subsidization of such services by subscribers to CMRS services – a rule that appears anachronistic given that CMRS rates are fully deregulated. Therefore, the staff recommends that as part of the 2000 Biennial Regulatory Review, the Commission should undertake a comprehensive review of the Part 22 cellular rules as well as other portions of Part 22 that have not received recent scrutiny.

Reconsideration Order).

[93] 47 C.F.R. § 22.937.

[94] 47 C.F.R. § 22.323.

PART 22, SUBPART E – PAGING AND RADIOTELEPHONE SERVICE

Description

Part 22, subpart E[95] contains licensing, technical, and operational rules for the Paging and Radiotelephone Service ("PARS"), which is the original public mobile telephone service that was established in the 1960s. This service was originally titled the "Domestic Public Land Mobile Radio Service" or "DPLMRS." Frequency bands in the low VHF (35-43 MHz), high VHF (72-76 MHz, 152-157 MHz), and UHF (454-459 MHz, 470-512 MHz and 931 MHz) ranges of the spectrum are allocated to this service. Although originally used by local telephone companies and other carriers to provide the original analog mobile telephone service ("Improved Mobile Telephone Service" or "IMTS"), these allocations today are primarily used for tone, voice, numeric and alphanumeric paging services. In general, the rules in this subpart: (1) specify the frequency bands allocated to PARS; (2) provide methods for determining the reliable service area and interfering contour of individual stations; (3) establish construction and commencement of operation requirements for licensees; and (4) define technical limits on operation (*e.g.*, transmitter power) to reduce the likelihood of interference.

The PARS rules have evolved considerably over the years as demand for paging service has increased while demand for the older type of non-cellular analog mobile telephone service has declined with the advent of cellular service. The PARS rules originally provided for two-way mobile radiotelephone service with paging allowed on a secondary basis, but they have evolved to focus primarily upon paging. There are also rules pertaining to the operation of internal point-to-point and point-to-multipoint fixed links that are essential for local and regional paging systems.

Currently, Part 22, subpart E is organized into six groups of rules. The first (sections 22.501-22.529) is a group of rules applying to all PARS stations.[96] Each of the subsequent five groups contains technical and operational rules pertaining only to a particular type of operation on specified channels. The types of operation are paging (sections 22.531-22.559),[97] one- and two-way mobile (sections 22.561-22.589),[98] point-to-point (sections 22.591-22.603),[99] point-to-multipoint (sections 22.621-22.627),[100] and trunked mobile operation (sections 22.651-22.659).[101] Some of the PARS 454-459 MHz channels are shared with basic exchange telephone radio systems (providing Rural Radiotelephone Service) and potentially with non-geostationary low earth orbit ("Little LEO") satellite downlinks.

Purpose

The purpose of subpart E is to facilitate the provision of commercial one-way and two-way wireless telecommunications services, in particular, one-way paging, to the general public at reasonable rates by: (1) utilizing a competitive bidding process to issue exclusive licenses to the service provider applicants who value them most; (2) preserving and enhancing competition between these service providers once licensed;

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95 47 C.F.R Part 22, subpart E.

96 47 C.F.R. §§ 22.501-22.529.

97 47 C.F.R. §§ 22.531-22.559.

98 47 C.F.R. §§ 22.561-22.589.

99 47 C.F.R. §§ 22.591-22.603.

100 47 C.F.R. §§ 22.621-22.627.

101 47 C.F.R. §§ 22.651-22.659.

(3) ensuring that available spectrum allocations are used efficiently; and (4) reducing the likelihood of harmful interference among licensed stations.

Analysis

Status of Competition

PARS stations governed by subpart E compete directly with Part 90 commercial paging services and with Part 24 narrowband PCS, and they compete indirectly with other CMRS. The *Fifth Competition Report* notes that one-way paging service subscribership appears to have peaked in 1999, and is now declining.[102] Analysts believe that this trend is the result of declining prices for alternative options, such as cellular and broadband PCS services, which include paging, voice mail and text messaging capabilities. Paging providers that have sufficient spectrum are attempting to reposition themselves in the market as wireless data providers.

Advantages

The PARS rules provide a clear, predictable regulatory structure for the assignment and use of the spectrum allocated to PARS service. Provision for accepting competing mutually exclusive applications and selecting the licensee by means of competitive bidding results in licenses being issued to the entities that value them the most. Geographic area licensing minimizes the administrative burden involved in obtaining a license. The technical rules are flexible enough to allow transition to narrowband technology capable of providing wireless data services.

Disadvantages

The PARS rules impose some burdens related to compliance with technical and operational rules. Although the Commission converted the authorization of the PARS from the original site-by-site procedure to a geographic area licensing process, several detailed technical rules related to the site-by-site procedure have been retained in order to protect the investment of grandfathered incumbent licensees in areas where the geographic licensee is a different entity.

Recent Efforts

The Commission made significant changes to its Part 22 subpart E rules during the last decade. In WT Docket No. 96-18, the Commission converted the authorization of stations in the PARS from the original site-by-site procedure to a geographic area licensing process.[103] More recently, most of the application filing rules were moved from this subpart to Part 1 in connection with implementation of electronic filing procedures and the Universal Licensing System.[104]

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[102] *Fifth Competition Report, supra*, at 57-58.

[103] *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 2732 (1997).

[104] *See Amendment of Parts 0, 1, 13, 22, 24 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, Report and Order*, 13 FCC Rcd 21027 (1998).

Recommendation

Most of the remaining rules in Part 22, subpart E are technical rules that are integral to the basic spectrum management function of the Commission, *e.g.*, reducing the likelihood of harmful interference between PARS licenses. The necessity for these technical rules is not significantly affected by changes in the level of competition in these services or CMRS generally. Moreover, as noted above, the Commission has recently made significant revisions that restructured and streamlined the Part 22 licensing rules. However, in view of the trends in paging and other CMRS services, the staff recommends that the Commission consider, *inter alia*, eliminating the following rules:

- Limits on the number of paging channels that a licensee can obtain in the same area at one time.
- Rules that impose operational burdens, such as station identification requirements, where the advance of technology may have made the cost of the rule exceed the benefit.
- 470-512 MHz Trunked Mobile Operation rules (sections 22.651 through 22.659). The availability of cellular service has made limited local trunked radiotelephone systems obsolete and the Commission has phased out this type of operation on this frequency band.
- Rules related specifically to services and technologies that were never implemented or have gone out of use (*e.g.*, sections 22.161, 22.603).

PART 22, SUBPART F – RURAL RADIOTELEPHONE SERVICE

Description

Part 22 subpart F[105] contains licensing, technical, and operational rules for the Rural Radiotelephone (Rural Radio) Service. The rules contain provisions governing eligibility, assignment of channels, and management of interference.

Rural Radio service is the only service regulated under Part 22 that is a fixed, rather than mobile, service. Rural Radio service makes basic telephone service available to persons who live in remote rural locations where it is not feasible, because of cost, environmental factors, or other practical concerns, to provide such service by wire. The rules provide that Rural Radio interoffice stations can also be used to link central offices where wireline links are similarly infeasible.

Two types of facilities are authorized in the Rural Radio service – conventional Rural Radio stations and basic exchange telephone radio systems (BETRS). Both types may be licensed on channel pairs in the high VHF (152-158 MHz) and low UHF (454-459 MHz) bands that are also allocated on a co-primary basis to the Paging and Radiotelephone service.[106] This co-primary allocation has worked over the years because there is little demand for paging service in the remote areas where Rural Radio service is needed, and likewise there is no need for Rural Radio service in suburban and urban areas where paging services are in demand. In WT Docket 96-18, the Commission provided for geographic area licensing of these bands for both paging and Rural Radio purposes.[107] However, because Rural Radio operators may seek to serve only a small portion of a geographic licensing area, the Commission also adopted a rule provision allowing Rural Radio licensees to operate individual sites on a secondary basis.[108]

Conventional Rural Radio stations may be licensed to any existing or proposed common carrier. These stations operate on exclusively assigned paired channels and are considered for regulatory purposes to be interconnected to, but not a part of, the local loop. Consequently, conventional Rural Radio stations do not have to meet state requirements affecting the local loop (*e.g.*, call blocking, transmission quality). Conventional stations use traditional analog FM technology and provide one telephone line per assigned channel pair. Often, two or more subscribers share service from a single Rural Radio station, party-line fashion.

Unlike conventional Rural Radio, BETRS facilities may only be licensed to entities that have been state certified to provide local exchange service in the geographic area in question (*e.g.*, LECs and CLECs). BETRS also operate on exclusively assigned paired channels, but they are considered, for regulatory purposes, to be a part of the local loop, and therefore must meet state standards applicable to the local loop. BETRS systems typically use digital TDMA technology that allows 2 or 4 independent *(i.e.*, private) telephone lines per assigned channel pair.

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105 47 C.F.R. Part 22, subpart F.

106 *See* summary of Part 22, subpart E, *supra.*

107 *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 2732 (1997).

108 47 C.F.R. § 22.723.

Purpose

The purpose of the Rural Radio rules is to facilitate provision of basic telephone service to persons who live in remote rural locations where it is not feasible to provide such service by wire.

Analysis

Status of Competition

The Rural Radio service was established in the 1970s to provide an extension of, rather than competition for, regular wireline local loop service. It is generally used only as a last resort in the most remote rural areas where wireline telephone service is not feasible or cost-effective. Rural Radio frequencies offer very limited traffic capacity, which would not be sufficient to provide viable telephony competition in suburban and urban areas, where these channels are primarily used by paging carriers. Historically, Rural Radio customers have had few if any competitive alternatives for provision of telephony due to their geographic isolation. More recently, however, other wireless services, such as cellular and PCS, have begun to expand into areas served by Rural Radio, and availability of competitive alternatives is likely to increase in the future.

Advantages

The rules in Part 22, subpart F provide a clear, predictable structure for the assignment and use of the spectrum co-allocated to the Rural Radio service to provide basic telephone service to persons who live in remote rural locations.

Disadvantages

As discussed below, some of the rules concerning Rural Radio appear to have become outdated as a result of technological developments since the rules were adopted.

Recent Efforts

The Commission has not recently revised the Rural Radio rules other than to establish geographic licensing rules, as discussed above.

Recommendation

In general, the staff recommends retention of the Rural Radio rules. However, some of these rules appear to have become outdated. Sections 22.417, 22.727, and 22.729[109] provide for the use of certain low VHF (44 MHz) channels for meteor-burst Rural Radio stations. It appears that these sections have not been used for many years, probably because of the availability of better alternatives in Alaska. The Commission should attempt to determine whether there are any such systems still in operation and, if not, propose to remove the meteor burst provisions.

Section 22.757[110] provides a limited allocation of private radio channels in the high UHF band (816-865 MHz) for BETRS use in certain areas. These have never been applied for or used for BETRS because of

[109] 47 C.F.R. §§ 22.417, 22.727, 22.729.

[110] 47 C.F.R. § 22.757.

their limited geographic availability, and because there is no equipment suitable for BETRS in this band. Also, the private radio rules governing these channels have been substantially changed since this allocation was made. The Commission should consider removing this allocation from the Rural Radio service.

PART 22, SUBPAR T G – AIR-GROUND RADIOTELEPHONE SERVICE

Description

Part 22, subpart G[111] contains licensing, technical, and operational rules for the Air-Ground Radiotelephone Service ("AGS"). AGS provides commercial telephone service to persons in airborne aircraft, using telephone instruments that are permanently mounted in the aircraft.

AGS consists of two separate parts: General Aviation air-ground stations and Commercial Aviation air-ground systems. General Aviation air-ground stations are permitted to serve only "general aviation" aircraft, which are aircraft owned by individuals or businesses for their own use that do not carry passengers for hire. General Aviation air-ground stations were first established in the late 1960s and operate in the 454-459 MHz range. General Aviation ground stations operate independently rather than as a system. Consequently, when an aircraft flies out of range of a ground station, any call in progress disconnects, and the user must then redial through another ground station. There are about 86 operational ground stations in the U.S.

Commercial Aviation air-ground systems are permitted to serve any type of aircraft, but primarily serve passengers aboard commercial airlines. Commercial Aviation systems use seat-back and bulkhead-mounted telephones commonly seen on commercial flights. These systems were established in the 1980s and operate in the 850-895 MHz range. Commercial aviation air-ground systems are all nationwide systems and calls in progress hand-off from one ground station to another uninterrupted as the aircraft flies across the country.

In general, the subpart G rules: (1) specify the frequency bands allocated to the General Aviation and Commercial Aviation air-ground services; (2) provide separation distance criteria for determining where new ground stations may be established; (3) establish minimum construction or coverage requirements for licensees; and (4) set forth certain technical limits on operation (*e.g.*, transmitter power).

Purpose

The purpose of subpart G is to facilitate the provision of commercial telephone service to persons aboard airborne aircraft.

Analysis

Status of Competition

The number of carriers providing AGS is small and most wireless carriers consider it to be a "niche" market. The principal operators of General Aviation stations are M-Tel and the successor companies of the Bell Operating companies, most notably Airtouch (now Verizon), though other, smaller operators exist also. Although more than one provider can share each ground station control channel pair,[112] few if any locations appear to have competing providers.

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111 47 C.F.R. Part 22, subpart G.

112 The original General Aviation technology allowed only one operator in each station location. In 1994, however, the Commission mandated use of a new technology, Air-Ground Radiotelephone Automated Service ("AGRAS"), that, among other improvements, allowed two

The 850-895 MHz frequencies used by Commercial Aviation air-ground systems can accommodate up to six competing systems, but only three of the six initial licensees ever constructed their systems.[113] Of these three, one (In-Flight Corporation) has gone out of business, so that only two carriers (GTE Airfone and Claircom, operated by AT&T Wireless) remain in operation.

Another potential source of competition in the air-ground sector may be provided by Aircell, which does not operate on AGS frequencies, but was granted a waiver in 1998 to provide air-ground service using specialized equipment that operates on cellular frequencies.[114]

Advantages

The AGS rules provide a clear, predictable structure for the assignment and use of the air-ground spectrum allocation.

Disadvantages

The AGS rules include highly specific requirements for the technical configuration of air-ground systems and the use of air-ground channels that may inhibit licensee flexibility and technical innovation.

Recommendation

The subpart G rules were largely adopted in the 1980s, and have not been significantly revised since. Air-ground service is also affected by technical and competitive considerations that are distinct from terrestrial CMRS. The staff therefore recommends that the Commission consider initiating a proceeding that would comprehensively review our air-ground rules in light of current technology and competitive conditions. Potential goals of such a proceeding would include: (1) adopting rules that foster competition by eliminating unnecessary barriers to entry; (2) eliminating rules that freeze technological advancement; and (3) providing incentives for existing terrestrial CMRS licensees to provide air-ground service.

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or more competing ground stations in a location to share control channels.

[113] Two of the three licensees who failed to construct surrendered their licenses voluntarily, and the third license was ultimately canceled by the Commission.

[114] *In the Matter of AirCell, Inc., Petition Pursuant to Section 7 of the Act, for a Waiver of the Airborne Cellular Rule, or, in the Alternative for a Declaratory Ruling, Order*, 14 FCC Rcd 806 (WTB 1998) (*AirCell Order*), a*ffirmed, Memorandum Opinion and Order,* 15 FCC Rcd 9622 (2000).

PART 22, SUBPART H– CELLULAR RADIOTELEPHONE SERVICE

Description

Part 22, subpart H[115] contains licensing, technical, and operational rules for the Cellular Radiotelephone Service ("cellular service"). This service was created in 1981 as an automated, high-capacity, nationwide-compatible mobile telephone service.[116]

The spectrum allocated to the cellular service is divided into two channel blocks, A and B. This was done to provide for two competing facilities-based providers in each licensing area. Initially, the cellular license for the B channel block in each licensing area was issued to the wireline telephone company in that area and the license for the A channel block issued to a company other than that wireline telephone company. Because there were multiple A block applicants in most markets, the initial licensee was selected by comparative hearings for the first (largest) 30 markets, and random selection (lotteries) for the remaining markets. After Congress gave the Commission authority to select among mutually exclusive applications using competitive bidding (auctions), the Commission began using auctions instead of lotteries in the cellular service. Throughout the 1980s and 1990s, many of the initial cellular licensees consolidated to form systems covering much larger geographical areas.

In general, the rules in Part 22, subpart H: (1) specify the frequency bands allocated to the cellular service; (2) provide methods for determining the Cellular Geographic Service Area (protected service area) of each system; (3) establish minimum construction and coverage requirements for cellular licensees; and (4) set forth certain technical limits on operation (*e.g.*, transmitter power).

Purpose

The purpose of subpart H is to facilitate the provision of commercial cellular services to the general public at reasonable rates, by: (1) utilizing a competitive bidding process to issue exclusive licenses to the service provider applicants who value them most; (2) preserving and enhancing competition between these service providers once licensed; (3) ensuring that available spectrum allocations are used efficiently; and (4) requiring coordination procedures to prevent harmful interference among cellular systems.

Analysis

Status of Competition

As detailed in the *Fifth Competition Report*, CMRS providers operate in an environment that is marked by significant and increasing competition in mobile telephony, paging/messaging, and mobile data.[117] Cellular is by far the largest mobile radiotelephone service in terms of subscribers, but competing broadband PCS

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115 47 C.F.R. Part 22, subpart H.

116 The idea of a cellular architecture, that is, a system of base stations, each having a small coverage area, which makes possible the reuse of radio channels at relatively short distances, had been conceptualized in the 1950s, but did not become technologically feasible until the late 1970s, when advances in computer technology needed to manage automatic hand-off of telephone calls between cells were realized.

117 *Fifth Competition Report*, *supra*, at 9-27, 36-63.

and enhanced SMR services are rapidly growing. Cellular systems compete with other mobile telephone services principally on the basis of pricing plans, geographical coverage, and operational features.

Advantages

The cellular rules provide a clear, predictable structure for the assignment and use of cellular spectrum. Although initial cellular licenses have been issued in every market, an on-going process allows for the licensing of any areas remaining unserved in those markets after the initial licensee's build out period has expired. The provision for accepting competing mutually exclusive applications for unserved areas and selecting the eventual licensee by means of competitive bidding results in licenses being issued to the entities that value them the most. In addition, the rules contain minimal and flexible technical standards for alternative cellular technologies that facilitate the introduction of digital service and new features.

Disadvantages

The cellular rules impose some administrative burdens inherent in the licensing process and compliance with technical and operational rules. However, some of the subpart H rules appear to be outdated in light of the current state of cellular technology and wireless competition. For example, subpart H contains regulations to prevent speculation and trafficking in cellular licenses, which were adopted at the time that cellular licenses were awarded by lottery. These rules appear to be anachronistic now that cellular licenses are awarded by auction.

In addition, although there are only minimal technical rules governing alternative cellular technologies, such as the digital modes and data services, subpart H continues to contain technical rules for the provision of analog service ("Advanced Mobile Phone Service" or "AMPS"). These rules are based on a 1981 technical compatibility specification, with numerous technical rules governing everything from call processing algorithms to modulation filter performance. As a result, these AMPS technical requirements are at least 15 years out of date.

Recent Efforts

The Commission has made significant changes to its Part 22 rules in recent years, mainly in the areas of increasing spectrum use flexibility[118] and streamlining the licensing process to incorporate electronic filing procedures and the Universal Licensing System.[119] Currently, the staff is preparing for the Commission's consideration proposals to eliminating cellular technical and administrative rules that have become obsolete because increased competition has caused technology to evolve at a rapid pace.

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[118] *Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8965 (1996) (*CMRS Flex Order/FNPRM*).

[119] *Amendment of Parts 0, 1, 13, 22, 24 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, Report and Order*, 13 FCC Rcd 21027 (1998) (*ULS Report and Order*), *affirmed and modified in part, ULS Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11476 (1999).

Recommendation

Many of the rules in Part 22, subpart H are integral to basic spectrum management functions of the Commission, such as requiring that spectrum assignments be put to full and efficient use. The necessity for some of these rules is not significantly affected by changes in the level of competition in wireless services.

However, as noted above, subpart H also contains a number of relatively old rules, particularly technical rules applicable to cellular service, that were adopted when wireless technology and competitive conditions were very different from the present day. In addition, certain rules (*e.g.*, rules requiring demonstration of an applicant's financial qualifications) were adopted in connection with the use of lotteries to award licenses, which has been superseded by the use of competitive bidding.

Therefore, the staff recommends that as part of the 2000 Biennial Regulatory Review, the Commission should undertake a comprehensive review of the subpart H rules. In accordance, with this recommendation, the staff is preparing a Notice of Proposed Rulemaking that would consider, *inter alia*:

> Whether to modify or eliminate, the rule requiring demonstration of financial qualifications by cellular applicants,[120] which was more appropriate under prior applicant selection systems such as random selection lotteries.
>
> Whether to modify or eliminate the rule requiring cellular systems to operate in conformance with the 1981 AMPS compatibility specification,[121] and various other technical rules that have become obsolete due to the rapid evolution of technology.
>
> Whether to privatize the assignment of system identification numbers. The manufacturing industry has recently formed an organization to manage and administer handset manufacturer codes, which was formerly done by the Wireless Telecommunications Bureau.

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120 47 C.F.R. § 22.937.

121 47 C.F.R. § 22.933.

PART 22, SUBPART I – OFFSHORE RADIOTELEPHONE SERVICE

Description

Part 22, subpart I[122] governs the licensing and operation of offshore radiotelephone stations. The Offshore Radiotelephone Service allows Commercial Mobile Radio Service (CMRS) providers to use conventional duplex analog technology to provide telephone service to subscribers located on (or in helicopters en route to) oil exploration and production platforms in the Gulf of Mexico.

Those using this service are licensed to operate in the paired 476/479 and 489/493 MHz bands in three zones comprising Louisiana and Texas, depending on the longitude. The channels were taken from UHF-TV Channels 15 and 17.[123]

Purpose

The purpose of the subpart I rules is to establish basic rules and procedures for the licensing and operation of offshore radiotelephone stations.

Analysis

Status of Competition

There are several competitive alternatives to Offshore Radiotelephone service in the Gulf. Two cellular companies currently operate in the Gulf of Mexico Service Area (GMSA), and some SMR service providers also operate there on a site-by-site basis. The Commission is also considering licensing in the Gulf in several other spectrum bands, including PCS and the 700 MHz band.[124]

Advantages

The subpart I rules provide a clear, predictable structure for the assignment and use of Offshore Radio spectrum.

Disadvantages

The subpart I rules impose limited administrative and technical burdens that are inherent in the licensing process and compliance with technical and operational rules.

Recent Efforts

The rules in this subpart have not been revised since 1995.

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122 47 C.F.R. Part 22, subpart I.

123 47 C.F.R. § 22.1007.

124 We also note that service is provided by other services as well: *e.g.*, PCS, WCS, satellite, VHF maritime, private radio (formerly petroleum radio service), private (offshore), and microwave.

Recommendation

In general, the rules in this part are integral to the basic licensing and spectrum management functions performed by the Commission. Therefore, the staff concludes that significant modification or repeal of the subpart I rules is not necessary at this time.

PART 22, SUBPART J – REQUIRED NEW CAPABILITIES PURSUANT TO THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA)

Description

The Communications Assistance for Law Enforcement Act (CALEA) was enacted by Congress to establish procedures for law enforcement to obtain authorized access to wireless and wireline communications or call-identifying information where such information is needed for law enforcement purposes.[125] Part 22, subpart J[126] contains technical standards and capabilities for cellular carriers to ensure that communications and call-identifying information will be accessible to law enforcement, as required by section 103 of CALEA.[127] These rules were adopted in 1999.[128] The Commission has adopted parallel requirements and standards for broadband PCS licensees in Part 24, subpart J[129] and for wireline telecommunications carriers in Part 64, subpart W.[130]

Purpose

The purpose of the CALEA rules is to ensure that law enforcement, pursuant to court order or other lawful authorization, will have reasonable access to wireless and wireline communications or call-identifying information where such information is needed for law enforcement purposes.

Analysis

Advantages

These rules arose from the Commission's specific statutory role as arbiter of differences among industry, law enforcement, and other interested parties regarding standards for complying with section 103 of CALEA. In large part, they reflect the consensus reached during the standard-setting process, as modified through application of the Commission's expertise in areas where consensus was not reached.

Disadvantages

The CALEA rules impose technical burdens on carriers to comply with the accessibility requirements of the statute, and may limit technical flexibility and innovation.

Recent Efforts

On August 15, 2000, the D.C. Circuit vacated and remanded for further explanation the CALEA rules insofar as they imposed certain capability requirements in excess of industry-adopted technical standards.

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125 47 U.S.C. § 1002.

126 47 C.F.R. Part 22, subpart J.

127 *Id.*

128 *See Communications Assistance for Law Enforcement Act, Third Report and Order*, 14 FCC Rcd 16794 (1999).

129 47 C.F.R. Part 24, subpart J.

130 64 C.F.R. Part 64, subpart W.

Recommendation

The staff recommends that the Commission reconsider its capability standards in light of the D.C. Circuit's remand.

PART 23 – INTERNATIONAL FIXED PUBLIC RADIOCOMMUNICATION SERVICES

Description

Part 23 implements and interprets sections 4, 301, and 303 of the Communications Act of 1934, as amended.[131] Part 23 sets forth rules applicable to high frequency ("HF") radio systems used for international communications, including general licensing and service rules, application filing requirements, and technical specifications. The rules classify these systems as either "fixed public service" (a radiocommunication service carried on between fixed stations open to public correspondence) or "fixed public press service" (a radiocommunication service carried on between point-to-point telegraph stations, open to limited public correspondence of news items or other material related to or intended for publication by press agencies, newspapers, or for public dissemination).

Although Part 23 does not contain lettered sub-parts, the rules are organized as follows:

Section 23.1	Definitions
Sections 23.11-23.12	Use of frequencies
Sections 23.13-23.19	Technical specifications
Sections 23.20-23.27	Use of frequencies
Sections 23.28-23.55	Licensing and service rules

Purpose

The Commission has stated that the original purpose of the Part 23 rules is "obscure." *Western Union Telegraph Co., Memorandum Opinion and Order,* 75 F.C.C.2d 461, 472 ¶ 39 (1980) (*Western Union MO&O*). Neither the Federal Communications Commission nor the Federal Radio Commission has issued any opinion explaining the rationale for the rules. *See id.* (research updated as of December 12, 1979). The FCC has not opined on these rules since the *Western Union MO&O*.

In the *Western Union MO&O,* the Commission stated that the rules contained in Part 23 derive from those promulgated by the Federal Radio Commission in 1932. At that time, fixed wireless links presumably provided an important method of communications between: (1) the contiguous 48 States (including D.C.) and Alaska, Hawaii, any U.S. possession, or any foreign point; (2) Alaska and any other point; (3) Hawaii and any other point; and (4) any U.S. possession and any other point. Part 23 provides the regulatory framework for these services. In addition, Part 23 governs radiocommunication within the contiguous 48 States (including D.C.) in connection with relaying the above-referenced international traffic.

Analysis

Status of Competition

Use of HF radio facilities in providing carriers' international communications services in the age of submarine cable and satellites is virtually dormant. There are two active Part 23 licensees, with a recently-filed Part 23 application – the first in several years – still pending. Competition among services under this rule Part is therefore not relevant.

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131 47 U.S.C. §§ 154, 301, 303.

Advantages

Part 23 provides the requisite framework within which licensees can perform useful functions in the provision of international communications services. HF radio stations can be a functionally useful supplement to submarine cable and satellite systems in the provision of service to overseas points not easily or economically reached by these facilities, in the provision of a limited restoral capability during submarine cable or satellite outages, and in the provision of certain specialized services such as press and weather map broadcast services.

Disadvantages

Because the type of international traffic addressed in these rules now is carried primarily by undersea cable and satellite, there is considerably less need for regulation in this area.

Recent Efforts

None.

Recommendation

Part 23 is ripe for streamlining or elimination. However, the staff recommends that Part 23 be retained in its entirety pending an in-depth Commission review to determine how the few remaining licensees are using this service and to project when submarine cable and satellite will fully supplant this service. Should the Commission determine that this service warrants continued regulation, the staff recommends the repeal of Part 23, with the necessary regulatory mechanisms (most likely, technical standards) incorporated into Part 90 or Part 101, each of which regulates similar services.

PART 24 — PERSONAL COMMUNICATIONS SERVICES

Description

Part 24[132] contains licensing, technical, operational, and auction rules for broadband and narrowband Personal Communications Services (PCS).[133] The rules in this part: (1) define PCS licensing areas; (2) specify the frequencies available to PCS licensees; (3) establish license terms and operational parameters; (4) set forth minimum coverage requirements for licensees; (5) establish minimum technical standards and limits on operation (*e.g.*, antenna height, transmitter power) to prevent interference; and (6) set forth application procedures and competitive bidding rules for the auction and award of PCS licenses.

In addition, subpart J contains requirements applicable to PCS under the Communications Assistance for Law Enforcement Act (CALEA).[134] Specifically, these rules set forth certain capability standards applicable to broadband PCS telecommunications carriers in order to ensure that, when properly authorized, law enforcement has access to communications or call-identifying information.

Part 24 is organized into ten lettered sub-parts:

A – General Information
B – Applications and Licenses
C – Technical Standards
D – Narrowband PCS
E – Broadband PCS
F – Competitive Bidding Procedures for Narrowband PCS
G – Interim Application, Licensing and Processing Rules for Narrowband PCS
H – Competitive Bidding Procedures for Broadband PCS
I – Interim Application, Licensing and Processing Rules for Broadband PCS
J – Required New Capabilities Pursuant to the Communications Assistance for Law Enforcement Act (CALEA)

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132 47 C.F.R. Part 24.

133 Narrowband PCS operates on the 901-902, 930-931, and 940-941 MHz bands. Broadband PCS operates in the 1850-1910 and 1930-1990 MHz bands.

134 *See* Communications Assistance for Law Enforcement Act (CALEA), Pub. Law No. 103-414, 108 Stat. 4279 (1994).

The Part 24 rules were initially adopted in 1993,[135] and were modified on reconsideration in 1994.[136] The Commission has recently issued an order further revising certain aspects of the Part 24 narrowband PCS rules.[137] The CALEA rules were adopted in a separate proceeding in 1999.[138]

Purpose

The purpose of the Part 24 rules is to establish basic ground rules for assignment of PCS spectrum, to ensure efficient spectrum use by PCS licensees, and to prevent interference. In addition, Part 24 contains rules that define eligibility for the PCS entrepreneurs' blocks and for "designated entity" (*i.e.*, small business) status within these blocks. The purpose of these provisions is to implement the objectives of section 309(j)(3) of the Communications Act[139] that the distribution of PCS licenses is not excessively concentrated, and that small businesses, rural telephone companies, and businesses owned by women and minorities will have opportunities to participate in the provision of PCS.

Analysis

Status of Competition

Broadband PCS providers primarily offer mobile telephony service in competition with cellular and some SMR services. As described in the *Fifth Competition Report*, the broadband PCS sector has contributed to a significant increase in competition in the mobile telephony market since the first broadband PCS providers were licensed five years ago.[140] However, broadband PCS has not yet achieved the same level of geographic coverage or subscribership as cellular, particularly in smaller markets.

Narrowband PCS providers primarily offer two-way messaging and services. They compete with a rapidly proliferating array of other messaging and mobile data services, including paging and wireless Internet services.

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135 *See Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order*, 8 FCC Rcd 7700 (1993); *Amendment of the Commission's Rules to Establish New Personal Communications Services, Third Report and Order*, 9 FCC Rcd 1337 (1994).

136 *See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Fifth Report and Order*, 9 FCC Rcd 5532 (1994); *See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Fourth Memorandum Opinion and Order*, 9 FCC Rcd 6858 (1994); *See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403 (1994).

137 *See Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS, Implementation of Section 309(j) of the Communications Act – Competitive Bidding Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making*, 10 FCC Rcd 403 (1994) (*Narrowband Second Report and Order*).

138 *See Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213, *Third Report and Order*, FCC 99-230 (rel. Aug. 31, 1999), *aff'd in part, rev'd in part, United States Telecom Ass'n v. FCC*, D.C. Circuit No. 99-1442 (Aug. 15, 2000).

139 47 U.S.C. § 309(j)(3).

140 *Fifth Competition Report*, *supra*, at 28-29.

Advantages

The Part 24 rules provide the basic regulatory structure necessary for the orderly assignment and use of PCS spectrum, while otherwise affording licensees substantial flexibility to determine what technology, type of service, and business strategy they will use. The Part 24 competitive bidding rules promote efficient licensing of PCS spectrum to those entities that value it the most.

Disadvantages

The Part 24 rules impose limited administrative and technical burdens that are inherent in the licensing process and compliance with technical and operational rules.

Recent Efforts

In an order adopted May 5, 2000, the Commission revised its narrowband PCS rules to eliminate certain regulatory burdens and afford narrowband PCS licensees greater flexibility than was provided under the original Part 24 rules.[141] Specifically, the Commission: (1) provided for use of larger licensing areas for the remaining narrowband PCS spectrum; (2) eliminated the limit on aggregation of narrowband PCS licenses; (3) eliminated technical restrictions and eligibility limitations on paging response channels; (4) adopted a "substantial service" alternative to existing construction and minimum coverage requirements; and (5) adopted partitioning and disaggregation rules.

On June 7, 2000, the Commission initiated a rulemaking to consider possible modifications to its entrepreneur eligibility rules for the C and F blocks in anticipation of the auction later this year of C and F block spectrum that has reverted to the Commission.[142] On August 29, 2000, the Commission released the Sixth Report and Order and Order on Reconsideration in WT Docket No. 97-82, in which it reconfigured the available C block licenses into 10 MHz blocks and removed the entrepreneur eligibility restrictions with respect to certain reconfigured C block licenses and all F block licenses.[143]

Recommendation

In general, the Part 24 rules are integral to the basic licensing and spectrum management functions performed by the Commission. The necessity for such rules is also not significantly affected by changes in the level of competition in PCS or in wireless services generally. Therefore, with certain exceptions noted below, the staff concludes that significant modification or repeal of the licensing and technical rules in Part 24 is not necessary at this time.

Part 24 contains two subparts (subparts G and I) that set forth "interim application, licensing, and processing rules" for narrowband and broadband PCS, respectively. Many of these rules appear to be duplicative of the consolidated Part 1, subpart F rules that establish licensing procedures for all wireless

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141 *See Narrowband Second Report and Order*, 10 FCC Rcd at 403.

142 *See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, *Further Notice of Proposed Rule Making*, FCC 00-197 (rel. June 7, 2000).

143 *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees, Sixth Report and Order and Order on Reconsideration*, FCC 00-313 (adopted August 23, 2000; released August 28, 2000).

services. In addition, a number of the competitive bidding provisions in Part 24 have been superseded by recent amendments to the general competitive bidding rules of Part 1, subpart Q. For example, Part 24 provisions addressing (1) competitive bidding design, (2) withdrawal, default and disqualification penalties, and (3) upfront, down and installment payments, have been replaced by updated provisions in Part 1, subpart Q. Therefore, the continued presence of service-specific auction rules in Part 24 appears to be redundant. The staff recommends that consideration be given to eliminating or phasing out these rules.

PART 25 – SATELLITE COMMUNICATIONS

Description

Part 25 was issued pursuant to the authority contained in section 201(c)(11) of the Communications Satellite Act of 1962, as amended, section 501(c)(6) of the International Maritime Satellite Telecommunications Act, and titles I through III of the Communications Act of 1934, as amended. Part 25 sets out the rules applicable to satellite communications, including general licensing and application filing requirements, technical standards, and technical operations.

Part 25 is organized into seven lettered sub-parts:

A – General
B – Applications and Licenses
C – Technical Standards
D – Technical Operations
E – Reserved
F – Competitive Bidding Procedures for DARS
G – Reserved
H – Authorization to Own Stock in the Communications Satellite Corporation
I – Equal Employment Opportunities

Purpose

Part 25 provides rules under which the Bureau licenses systems to provide various satellite services. The rules are designed to accommodate efficiently the maximum number of systems possible for each type of service, to enhance competition for satellite services and the terrestrial services with which they compete. Sections of Part 25 also have provisions: (1) to protect against impermissible levels of interference; (2) to assure compliance with international agreements and treaties; (3) to assure the timely construction and operation of authorized earth stations and the timely construction, launch and operation of authorized space stations; (4) to assure the timely provision of sufficient information to allow for processing of applications; and (5) to assure compliance with license specifications and conditions as well as with Commission rules and regulations. In addition, Part 25 provides competitive bidding procedures for the provision of DARS services, and specifies the procedure by which the Commission authorizes the purchase of stock in COMSAT. Part 25 also provides for preemption of local zoning of earth stations, unless the reasonableness of the regulation can be demonstrated.

Analysis

Status of Competition

The satellite services regulated by Part 25 are fully competitive on most routes. There are four major satellite service providers and several smaller providers that are licensed to provide state-of-the-art satellite telephony and data services to U.S. consumers and consumers worldwide. On many routes, satellite telephony and data services are offered by several satellite providers. In addition, these satellite service providers face competition from terrestrial service providers for some services on some routes. The Commission's rules and policies have led to the competitive industry that we see today by encouraging satellite companies to "pack" the satellite orbits and maximize the use of frequencies available at those

orbital locations. Part 25 rules also provide licensing mechanisms for future entry and further competition in these services. The rules also contain criteria to permit foreign entry into the U.S. markets to further compete for U.S. consumers.

Advantages

General Applications Filing Requirements: Part 25 provides clear procedures for filing applications, and predictable procedures for evaluating whether applications are complete. Part 25 also provides clear and predictable procedures for amendments, modifications, assignments and transfers. In addition, section 25.120 provides effective procedures for handling applications for special temporary authorization when delay would seriously prejudice the public interest. This allows for a more efficient use of resources.

Earth Stations: Sections 25.130 through 25.137 include procedures that allow for a frequency coordination analysis to reduce interference and the verification of earth station antenna performance standards. These clear procedures minimize the cost associated with reducing interference. Provisions in Part 25 also assure compliance with international agreements and treaties. Section 25.133 includes requirements for the timely construction and operation of earth stations. By reducing the likelihood that resources will be allocated to "phantom" ventures, section 25.133 assures that unnecessary costs were not imposed on other services that would have been limited by the need for coordination to reduce interference with systems that are, in fact, not implemented.

Space Stations: Sections 25.140 through 25.145 include conditions to facilitate coordination to avoid harmful interference to other systems. These sections also outline conditions for qualification as an applicant, which enhances the likelihood that the proposed systems will be constructed, launched and operated if licensed. These conditions reduce the likelihood that unnecessary costs will be imposed on other services through coordination to reduce interference. Section 25.140 also includes limitations on the number of orbital locations that can be assigned to each applicant, thereby fostering competition and reducing the likelihood of anti-competitive behavior.

Processing of Applications and Forfeiture, Termination, and Reinstatement of Station Authorizations: Sections 25.150 through 25.163 include well-defined procedures for processing applications to determine whether the applications are mutually exclusive. These sections also maximize compliance with Commission rules and minimize enforcement costs.

Subpart C—Technical Standards and Subpart D—Technical Operations: These subparts provide clear and predictable technical standards and operating rules to minimize interference.

Subpart F—Competitive Bidding Procedures for DARS: This subpart describes a mechanism for competitive bidding for satellite DARS service. Competitive bidding promotes competition and awards DARS licenses to those firms that will most efficiently use those resources to compete in providing service. Competitive bidding is more efficient than other forms of assignment.

Subpart H—Authorization to Own Stock in the Communications Satellite Corporation: These rules provide the procedure for the administration of section 304 of the Communications Satellite Act of 1962. With the signing of the ORBIT Act Pub. Law No. 106-180, 114 Stat. 4B (2000), earlier this year, section 304 of the Communications Satellite Act of 1962 ceases to be effective.

Subpart I—Equal Employment Opportunities: This section promotes diversity in employment and creates opportunities.

Disadvantages

Earth Stations: Some limitations included in these rules might hamper the introduction of new services. For example, it may be possible to relax the threshold technical rules that trigger inter-system coordination among satellite service providers and reduce the burden on coordinating new and innovative satellite technologies.

Space Stations: Section 25.140 requires a demonstration that an applicant is legally, financially, technically and otherwise qualified to proceed expeditiously to operate the proposed space station, and outlines the information required to make this demonstration. If the qualifications are too restrictive, some applicants that would be able to offer service expeditiously would be eliminated from the pool of potential satellite service providers, which may result in reduced competition. In addition, section 25.140 limits the allocation of orbital slots to each applicant, which can restrict the introduction of new services. The radio-determination satellite service spectrum described in section 25.141 has been reallocated to MSS, and the rules in this section no longer serve any purpose. Section 25.144 includes licensing provisions for satellite digital audio radio service, and specifies the applicants eligible for the auction. This rule, too, serves no purpose because the auction has already been held and the pool of applicants is overtaken by events.

Processing of Applications and Forfeiture, Termination, and Reinstatement of Station Authorizations: The preparation of applications and the delay associated with public comment periods and the examination of applications can be costly to applicants.

Subpart C—Technical Standards and Subpart D—Technical Operations: These standards and operating rules, while preserving the operating environment today, could hamper the introduction of new services and restrict alternative uses of resources in the future.

Subpart F—Competitive Bidding Procedures for DARS: Satellite services in unplanned frequency bands require international coordination prior to the commencement of operations. The value of the orbital location resource is uncertain if the international coordination process has not yet been completed.

Subpart H—Authorization to Own Stock in the Communications Satellite Corporation: These rules ceased to be effective with the recent signing of the ORBIT Act.

Subpart I—Equal Employment Opportunities: Rules in this section might increase operating costs.

Recent Efforts

As described in the staff report, the Commission has taken and continues to take steps to streamline both the earth station and space station portions of its satellite licensing process and to provide earth station applicants with greater flexibility. The staff is reviewing the technical and operational standards contained in Part 25.

Recommendation

The staff recommends further streamlining of its earth station and space station licensing processes. The staff recommends that the Commission commence a *Notice of Proposed Rulemaking* (*NPRM*) seeking comment on industry proposals for comprehensive changes in the earth station licensing process. It also recommends that the Commission seek comment on requiring electronic filing, which could save substantial

time in processing applications. In addition, the staff recommends that the Bureau continue working with industry to re-examine the entire satellite network licensing process.

Furthermore, the staff recommends repealing section 25.141 and subpart H of the Commission's rules. The staff recommends review of the financial qualification rules in section 25.140 to determine if the financial qualification rules are necessary, and if a different showing of financial qualification might be appropriate.

PART 26 – GENERAL WIRELESS COMMUNICATIONS SERVICES

Description

Part 26[144] contains licensing, technical, and operational rules for General Wireless Communications Services (GWCS) in the 4660-4685 MHz band. The rules in this part: (1) define permissible communications; (2) establish license terms and parameters; (3) establish minimum technical standards and limits on operation (*e.g.*,antenna height, emission limits) to prevent interference; (4) define GWCS service areas; and (5) set forth application procedures and competitive bidding rules for the auction and award of GWCS licenses.

The Commission adopted the Part 26 rules in the 1995 *GWCS Second Report and Order*.[145] The rules allow GWCS licensees to provide any fixed or mobile communications service on their assigned spectrum. Broadcasting, radiolocation, and satellite services are prohibited. However, as discussed below, no licenses have been awarded in the service, the 4660-4685 MHz band has since been reclaimed by the federal government, and the Commission has proposed to delete the Part 26 rules.

Purpose

The purpose of the Part 26 rules is to establish basic ground rules for assignment of spectrum in Part 26 services, to ensure efficient spectrum use by licensees, and to prevent interference.

Analysis

Status of Competition

No licenses have been awarded in the GWCS service. The Commission contemplated that GWCS would accommodate a variety of fixed and mobile service uses, such as voice, video and data transmission, private microwave, broadcast auxiliary, and ground-to-air voice and video.[146] In April 1998, however, the Wireless Telecommunications Bureau postponed the GWCS auction scheduled for May 27, 1998 due to a lack of demand for licenses in the 4660-4685 MHz band.[147] The lack of demand appeared to result from the relatively small size of the spectrum block and from potential interference problems due to U.S. Navy use of adjacent spectrum.

Advantages

Not Applicable.

Disadvantages

Not applicable.

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144 47 C.F.R. Part 26.

145 *Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, Second Report and Order*, 11 FCC Rcd 624 (1995) (*GWCS Second Report and Order*).

146 *Id.*, 11 FCC Rcd at 630-31, ¶ 12.

147 Wireless Telecommunications Bureau Announces Postponement of GWCS Auction, *Public Notice*, Report No. AUC-98-19-B (Auction No. 19), DA 98-792, (rel. Apr. 24, 1998).

Recent Efforts

On March 30, 1999, the Department of Commerce notified the Commission that the Federal Government was reclaiming the 4635-4685 MHz band and identified the 4.9 GHz band as substitute spectrum for private sector use.[148] Accordingly, on February 23, 2000, the Commission adopted a *Notice of Proposed Rulemaking* in WT Docket No. 00-32 proposing to eliminate the GWCS rules and delete Part 26.[149] In the *Notice*, the Commission states that it will allocate and establish licensing and service rules for the 4.9 GHz band as substitute spectrum. [150] In the *Notice*,[151] the Commission also proposes to license the 4.9 GHz band under Part 27 of the Commission's Rules.[152]

Recommendation

In light of the Commission's pending proposal in WT Docket No. 00-32 to delete the Part 26 rules, the staff makes no recommendations with respect to these rules.

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148 Letter to the Honorable William E. Kennard, Chairman, Federal Communications Commission, from Larry Irving, Assistant Secretary for Communications, U.S. Department of Commerce (Mar. 30, 1999).

149 *The 4.9 GHz Band Transferred From Federal Government Use, Notice of Proposed Rulemaking*, 15 FCC Rcd 4778 (2000).

150 *Id.*, Appendix A.

151 *Id.*, ¶ 2.

152 47 C.F.R. Part 27. Because Part 26 applies only to the 4660-4685 MHz band, we propose to delete Part 26 of the Commission's Rules containing General Wireless Communications Services (GWCS) rules. 47 C.F.R. Part 26.

PART 27 – MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

Description

Part 27[153] contains licensing, technical, and operational rules for the Wireless Communications Services (WCS) and for other new wireless services. The rules in this part: (1) define WCS license areas; (2) specify the frequencies available to WCS licensees; (3) establish license terms and operational parameters; (4) establish minimum technical standards and limits on operation (*e.g.,* antenna height, power limits) to prevent interference; and set forth application procedures and competitive bidding rules for the auction and award of WCS licenses.

Part 27 is divided into six sub-parts:

A – General Information
B – Applications and Licenses
C – Technical Standards
D – Competitive Bidding Procedures for WCS
E – Application, Licensing and Processing Rules for WCS
F – Competitive Bidding Procedures for the 747-762 MHz and 777-792 MHz Bands

The Omnibus Consolidated Appropriations Act (1997) directed the Commission to reallocate the 2305-2320 and 2345-2360 MHz bands to wireless services and, among other things, to promote the most efficient use of the spectrum.[154] On February 19, 1997, the Commission adopted a *Report* and *Order* establishing the Wireless Communications Service (WCS) in these bands and establishing the Part 27 rules.[155] Pursuant to these rules, WCS licenses were auctioned in 1998.

More recently, the Commission has amended Part 27 to add new rules for wireless services that will operate in the 747-762 MHz and 777-792 MHz bands (700 MHz services). In the *700 MHz First Report and Order,* released on January 7, 2000, the Commission adopted rules for the 700 MHz services that provide for the broadest possible use of this spectrum, consistent with principles of sound spectrum management. [156] However, the Commission also noted that the 746-806 MHz band has historically been used exclusively by television stations (Channels 60-69). These incumbent broadcasters are permitted by statute to continue operations in this band until their markets are converted to digital television.[157]

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153 47 C.F.R. Part 27

154 47 U.S.C. § 309(j).

155 *See Amendment of the Commission's rules to Establish Part 27, the Wireless Communications Service (WCS), Report and Order,* 12 FCC Rcd 10785 (1997) (*WCS Report and Order*), *recon. Memorandum Opinion and Order*, 12 FCC Rcd 3977 (1997).

156 *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, First Report and Order,* 15 FCC Rcd 476 (2000).

157 *See* 47 U.S.C. § 337(e). *See Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service, Reconsideration of Fifth Report and Order,* 13 FCC Rcd 6860, 6887 (1998).

Purpose

The purpose of the Part 27 rules is to establish basic ground rules for assignment of spectrum with respect to Part 27 services, to ensure efficient spectrum use by licensees, and to prevent interference. In addition, Part 27 contains rules that define eligibility for small business status within these blocks. These provisions implement the objectives of section 309(j)(3) of the Act that the distribution of licenses not be excessively concentrated, and that small businesses, rural telephone companies, and businesses owned by women and minorities have opportunities to participate in the provision of WCS and other wireless services.

Analysis

Advantages

The Part 27 rules provide a clear, predictable structure for the assignment and use of spectrum while allowing for maximum service flexibility. The service rules follow a flexible, market-based approach that affords maximum flexibility to licensees to decide on development and deployment of new telecommunications services and products to consumers. The rules also ensure that licensees are not constrained to a single use of this spectrum and, therefore, can offer a mix of services and technologies to their customers.[158]

Disadvantages

The Part 27 rules impose limited administrative and technical burdens that are inherent in the licensing process and compliance with technical and operational rules.

Recent Efforts

In the *700 MHz Further Notice of Proposed* Rulemaking, released on June 30, 2000, the Commission has sought comment on specific issues relating to possible voluntary relocation of broadcast incumbents out of the 700 MHz band. [159]

On March 30, 1999, the Department of Commerce notified the Commission that the Federal Government was reclaiming the 4635-4685 MHz band and identified the 4.9 GHz band as substitute spectrum for private sector use.[160] Accordingly, on February 23, 2000, the Commission adopted a *Notice of Proposed Rulemaking* in WT Docket No. 00-32, proposing to allocate and establish licensing and service rules for the 4.9 GHz band as substitute spectrum. [161] In the *Notice*, the Commission proposed to license the 4.9

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158 *WCS Report and Order*, 12 FCC Rcd 10785 at ¶ 26 (1997).

159 *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, Carriage of the Transmissions of Digital Television Broadcast Stations, Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, WT Docket No. 99-168, CS Docket No. 98-120, MM Docket No. 00-83, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, FCC 00-224, (June 30, 2000).

160 Letter to the Honorable William E. Kennard, Chairman, Federal Communications Commission, from Larry Irving, Assistant Secretary for Communications, U.S. Department of Commerce (Mar. 30, 1999).

161 *The 4.9 GHz Band Transferred From Federal Government Use, Notice of Proposed Rulemaking*, 15 FCC Rcd 4778 (2000).

GHz band under the Part 27 rules. Additionally, the Commission proposed to codify and conform certain rules for the 2.3 GHz band to provide for consistent regulation of Part 27 services.[162]

Recommendation

The staff recommends retaining the Part 27 rules.

[162] *Id.*

PART 32 – UNIFORM SYSTEM OF ACCOUNTS

Description

Section 220 of the Communications Act of 1934, as amended, requires the Commission to prescribe a uniform system of accounts for telephone companies.[163] Part 32 of the Commission's rules implements section 220's mandate and contains the Uniform System of Accounts ("USOA") for incumbent local exchange carriers.[164] The USOA is an historical financial accounting system that discloses the results of operational and financial events in a manner that enables both the companies' management and policy-making agencies to assess these results. The financial accounts of a company are used to record, in monetary terms, the company's basic transactions. Like any accounting system, the Part 32 USOA consists of a chart of accounts that can be used to prepare balance sheets, income statements, and other financial reports. To reflect what happens within the telecommunications industry on a consistent and continuing basis, the Part 32 USOA uses standard accounts and methods for preparing such accounts.

Part 32 is organized into seven lettered sub-parts:

A – Preface
B – General Instructions
C – Instructions for Balance Sheet Accounts
D – Instructions for Revenue Accounts
E – Instructions for Expense Accounts
F – Instructions for Other Income Accounts
G – Glossary

On a substantive level, the Part 32 USOA performs four general functions. First, the Part 32 USOA sets forth a standardized chart of accounts and thereby directs companies how to record certain transactions in their books of account. Second, the Part 32 USOA establishes rules for a carrier's affiliate transactions. Third, the Part 32 USOA specifies accounting treatment for depreciation expenses. Finally, the Part 32 USOA requires carriers to maintain property records of all telecommunications plant in service.

Purpose

The Part 32 USOA acts as a nonstructural safeguard to prevent an incumbent LEC from exercising its market power. Specifically, through standardized accounting procedures, the Part 32 USOA helps ensure that ratepayers of regulated services do not bear the costs and risks associated with an incumbent LEC's competitive operations. In addition, the Part 32 USOA restrains an incumbent LEC's ability to charge monopoly prices because it provides ratepayers with information that can be used to pursue a complaint against unjust and unreasonable rates.

The USOA also provides the Commission, state commissions, ratepayers, consumer advocates, the financial community, and others with large carriers' financial performance results that are ultimately reflected in their rates for telecommunications services. By providing a standardized means for analyzing an incumbent LEC's performance, the Part 32 USOA is a tool for the Commission's comparative analysis regulatory technique. The Commission implemented the Part 32 USOA in large part to reduce the need for costly and time-consuming special studies that carriers performed for policy-making purposes, while at the

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163 47 U.S.C. § 220.

164 47 C.F.R. Part 32.

same time to provide the Commission and others with information used to make decisions regarding telecommunications competition, universal service, separations, access charges, and other policy issues.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas.

Advantages

As a nonstructural safeguard, the Part 32 USOA is a lower-cost alternative to structural separation as a means for preventing an incumbent LEC from exercising its market power.[165] With its level of accounting detail, the Part 32 USOA deters cost misallocations by providing the initial information needed to identify cross-subsidization. In this way, regulated services are protected from bearing the costs of an incumbent LEC's competitive operations.

The Part 32 USOA clearly specifies the incumbent LEC's chart of accounts and the manner in which the carrier prepares such accounts. The standardized approach lowers the Commission's costs of monitoring the industry and enforcing its rules. Because the Part 32 USOA incorporates Generally Accepted Accounting Principles ("GAAP"), Part 32 reduces the carriers' cost of complying with the Commission's rules.

Working in tandem with the Part 43 reporting requirements, the Part 32 USOA is a low-cost means to gather information in the market about financial performance of large incumbent LECs.[166] Policy-makers, ratepayers, and others can then use an incumbent LEC's accounting information to make more informed decisions. The information is also used to support a viable and sufficient system of universal service support. Finally, disclosure enables ratepayers to pursue complaints regarding unjust and unreasonable rates, and therefore lowers the Commission's costs of enforcing the Act.

Disadvantages

The Part 32 USOA may increase an incumbent LEC's cost of performing internal accounting services because it establishes record-keeping requirements and accounting procedures (*e.g.*, depreciation studies) that may not be necessary in a competitive environment. Because the Commission intended for Part 32 USOA to deter cross-subsidization largely in a rate-of-return environment, it established a level of accounting detail that serves as a starting point in identifying cross-subsidization. As a result of

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[165] *See Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, Report and Order*, 11 FCC Rcd 17539 (1996).

[166] The reporting threshold is modified annually to adjust for inflation. The current reporting threshold is $114 million, so that only carriers with $114 million or more in annual operating revenues report their Part 32 USOA results in the Automated Reporting Management Information System ("ARMIS") program.

competitive developments during the 1990s, Part 32 may impose more burdensome information requirements on incumbent LECs than needed in light of the changing competitive landscape.

Recent Efforts

The Commission revised its Part 32 rules during the 1998 Biennial Regulatory Review.[167] In that proceeding, the Commission substantially streamlined its accounting requirements for mid-sized incumbent LECs. The Commission also reduced accounting requirements on all incumbent LECs by eliminating certain accounts.

Through the on-going Comprehensive Review proceeding, the Commission is streamlining its Part 32 accounting rules as the industry becomes increasingly competitive. The Comprehensive Review involves a two-phase approach during which the Commission is soliciting the views of the states, the industry, and the public in a series of public workshops (as well as through standard notice-and-comment cycles).

In Phase 1 of the Comprehensive Review, the Commission addressed accounting and reporting reform issues that could be implemented without delay. In the *Phase 1 Order*, which the Commission released in March 2000, the Commission substantially reduced the level of accounting detail required in certain reports, eliminated pre-notification requirements, relaxed the cost allocation manual audit requirements, and streamlined a number of ARMIS reporting requirements.[168]

In Phase 2, the Commission will look to reducing accounting and reporting requirements for incumbent LECs as the industry becomes more competitive. Phase 2 of the Comprehensive Review started in December 1999. During the first quarter of 2000, Commission and state participants met numerous times to discuss the issues of most interest to all parties. A series of five public workshops commenced on April 5, 2000. These workshops provide an opportunity for all interested parties, state commissions, incumbent LECs, interexchange carriers, CLECs, and consumers to voice their opinions on accounting and reporting reform.

Recommendation

Pursuant to the Commission's comprehensive review of its accounting requirements, which it initiated in 1999, the staff recommends substantial reductions in the Commission's accounting requirements. These regulatory changes are responsive to the competition that has developed in recent years. For example, the staff recommends reducing the chart of accounts,[169] modifying expense limits,[170] eliminating outdated accounts,[171] and exempting certain transactions from the affiliate transactions rules.[172] As the

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167 *See 1998 Biennial Regulatory Review – Review of Accounting and Cost Allocation Requirements, Report and Order in CC Docket No. 98-81, Order on Reconsideration in CC Docket No. 96-150, Fourth Memorandum Opinion and Order in AAD File No. 98-43*, 14 FCC Rcd 11396 (1999).

168 *Phase I Order*

169 *See, e.g.*, 47 C.F.R. §§ 32.5110, 5111, 5112, 5120, 5122, 5123, 5124, 5125, 5126, 5129, 5160, 5169, 5301, 5302, 7600, 7610, 7620, 7630, 7640.

170 *See* 47 C.F.R. § 32.2000.

171 *See e.g.*, 47 C.F.R. §§ 32.2211 (analog switching account), 2215 (electro-magnetic switching account).

172 *See* 47 C.F.R. § 32.27.

telecommunications industry becomes increasingly competitive, the Commission should consider further reducing accounting requirements.

PART 36 – JURISDICTIONAL SEPARATIONS PROCEDURES

Description

In 1930, the Supreme Court, in the case of *Smith v. Illinois*, recognized the system of state and federal regulation of telecommunications, concluding that because interstate calls originate and terminate over local exchange plant, interstate charges should reflect some portion of the cost of local plant.[173] The Part 36 jurisdictional separations rules are part of the Commission's present-day implementation of that decision. The Part 36 rules contain procedures and standards for dividing telephone company investment, expenses, taxes and reserves between the state and federal jurisdictions. In addition to allocating costs between the federal and state jurisdictions, Part 36 also serves a universal service function. Specifically, Part 36 permits carriers that serve high-cost areas to allocate additional local loop costs to the interstate jurisdiction and to recover those costs through the high-cost universal service support mechanism, thus making intrastate telephone service in high-cost areas more affordable.

Part 36 is organized into 7 lettered sub-parts:

A – General
B – Telecommunications Property
C – Operating Revenues and Certain Income Accounts
D – Operating Expenses and Taxes
E – Reserves and Deferrals
F – Universal Service Fund
G – Lifeline Connection Assistance Expense Allocation

Purpose

Part 36 is intended to recognize the dual system of telecommunications regulation, with interstate calling regulated at the federal level. Part 36 is intended to ensure that incumbent LECs are able to recover a portion of local exchange costs through interstate rates, since interstate long distance calls originate and terminate over these facilities. It is also intended to prevent incumbent LECs from recovering the same costs through both interstate and intrastate rates. The additional interstate cost allocation for high-cost areas is intended to foster universal service by ensuring that local exchange rates in such areas remain generally affordable.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas.

Advantages

The existing Part 36 separations rules facilitate state and federal common carrier rate regulation by dividing incumbent LEC costs between the two jurisdictions. The division of costs between the state and

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[173] *Smith v. Illinois Bell Tel. Co.*, 282 U.S. 133, 148 (1930).

federal jurisdictions is necessary for the calculation of state and federal earned rates of return. Such earned rates of return are used in rate base rate of return regulation to determine whether earnings are excessive. In price cap regulation, an earned rate of return is also calculated for purposes of the low-end adjustment. The subpart F rules providing for an additional interstate cost allocation for high-cost areas promote universal service by keeping local exchange rates generally affordable in these areas.

Disadvantages

The current jurisdictional separations rules may be unnecessarily complex and may impose some unnecessary recordkeeping burdens on incumbent LECs.

Recent Efforts

The Commission is currently in the process of considering separations reform in conjunction with a Federal-State Joint Board, made up of federal and state commissioners. The Commission initiated this review with an Notice of Proposed Rulemaking in 1997, requesting comment on the impact on jurisdictional separations of legislative, technological, and market changes, as well as several industry proposals for separations reform.[174] Most of the commenting parties supported continuation of some form of separations until the local exchange market is fully competitive, although there was a wide range of interim proposals. On July 21, 2000, the Federal–State Joint Board on jurisdictional separations recommended that the Commission freeze the Part 36 plant category relationships[175] and the jurisdictional allocation factors on an interim basis until comprehensive reform of jurisdictional separations can be implemented.[176]

Recommendation

The staff recommends continuation of the on-going work on jurisdictional separations reform. The staff, however, does not recommend further review of the universal service provisions contained in Part 36 in the context of the current biennial regulatory review. The staff recommends elimination of the subpart G lifeline provisions in Part 36, since they are no longer in effect and have been replaced by rules in Part 54. There are also a number of other rules in Part 36 that can be eliminated because they are applicable to specific time periods that have since passed.[177]

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[174] *Jurisdictional Separations Reform*, 12 FCC Rcd 22120 (1997).

[175] This would freeze the relative proportions of plant allocated to the various separations plant categories. Changes in the relative proportion of plant allocated to the various plant categories can change separations results if the plant categories involved are apportioned between the federal and state jurisdictions on the basis of different factors.

[176] *Recommended Decision, Jurisdictional Separations Reform and Referral to the Federal-State Joint Board* CC Docket No. 80-286 FCC 00J-2 (rel. July 21, 2000).

[177] These provisions include 47 C.F.R. §§ 36.631(a), 36.631(b), and 36.641(b).

PART 42 – PRESERVATION OF RECORDS OF COMMON CARRIERS

Description

Part 42 implements sections 219 and 220 of the Communications Act of 1934, as amended, which authorize the Commission to require communications common carriers to keep records and file reports. Part 42 sets forth rules governing the preservation of records of communications common carriers, including all accounts, records, memoranda, documents, papers and correspondence prepared by or on behalf of such carriers. It also requires non-dominant interexchange carriers to make available information concerning the rates, terms, and conditions for their services.

Purpose

Part 42 was designed to implement sections 219 and 220. Part 42 was established to facilitate enforcement of the Communications Act by ensuring the availability of carrier records needed by the Commission to meet its regulatory obligations. Part 42 is also intended to aid enforcement of criminal statutes by requiring the retention of telephone toll records. In addition, Part 42 serves the public interest by giving consumers access to information about the rates, terms, and conditions for domestic, interstate, interexchange services.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitors still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The domestic U.S. long distance market is competitive, although there is greater competition for high volume customers than for low volume customers. Competition in the international services markets is also increasing. These markets are rapidly changing from being dominated by a small number of national telecommunications providers to having a large number of competitors.

Advantages

By relying primarily on general instructions to guide the preservation of records, Part 42 gives regulated common carriers significant flexibility in choosing how to preserve records. This allows carriers to choose the storage media, reducing their record storage and retrieval costs. Part 42 also gives carriers flexibility in determining proper retention periods, although it specifies the retention period for toll records in order to assist law enforcement activities. Part 42 also benefits consumers by ensuring that they have access to information on carrier rates, terms, and conditions.

Disadvantages

Part 42 may increase carriers' recordkeeping costs to some extent. Requiring carriers to post information concerning their rates for domestic, interstate, interexchange services may increase the risk of tacit price collusion.

Recent Efforts

On March 31, 1999, the Commission reinstated the public disclosure requirement for domestic, interstate, interexchange long distance services in light of plans to implement de-tariffing of these services. The U.S. Court of Appeals for the D.C. Circuit recently upheld the Commission's decision to mandate de-tariffing for domestic interstate long distance service.[178]

Recommendation

The staff recommends that Part 42 be maintained without substantial change because it provides carriers with significant flexibility while ensuring that necessary information will be available to the Commission and law enforcement officials. The staff also recommends that the public disclosure rules in Part 42 be maintained because they provide valuable information to consumers.

[178] *MCI WorldCom, Inc. v FCC,* 209 F.3d 132 (D.C. Cir. 2000).

PART 43 – REPORTS OF COMMUNICATIONS COMMON CARRIERS AND CERTAIN AFFILIATES

Description

Section 211 of the Communications Act of 1934, as amended, requires carriers to file with the Commission copies of all contracts, agreements, or arrangements with other carriers that relate to any traffic affected by the Act.[179] Section 219 authorizes the Commission to require all carriers that are subject to the Act to file annual reports with the Commission.[180] Section 220 allows the Commission to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers.[181]

Part 43 of the Commission's rules implements these sections by establishing rules that perform three major functions. First, Part 43 prescribes general requirements and filing procedures for several reports which various carriers are required to file. These include the annual Automated Reporting Management Information System (ARMIS) reports on financial and operating data that are filed by common carriers with operating revenues exceeding an indexed revenue threshold, reports on proposed depreciation changes, reports on international telecommunications traffic, and international circuit status reports. Second, Part 43 requires that certain carriers file with the Commission copies of specified contracts, agreements and arrangements with other carriers. Third, Part 43 sets forth the Commission's International Settlements Policy, which is designed to ensure that U.S. telecommunications carriers pay nondiscriminatory rates for termination of international traffic in foreign countries.

Purpose

Part 43 is intended to implement section 211. The reports required by Part 43 assist the Commission in monitoring the industry to ensure that carriers comply with the Commission's rules, and in tracking market and other industry developments, which improves the Commission's ability to identify developing regulatory issues and analyze the effects of alternative policy choices. The reports of proposed changes in depreciation rates allow the Commission to monitor the depreciation rates for dominant carriers' capital assets.[182] The contract-filing requirement helps the Commission to identify potential instances of anti-competitive conduct, and to enforce its International Settlements Policy. The International Settlements Policy is designed to protect U.S. international carriers and the customers they serve from the potential exercise of market power by dominant foreign carriers, which could unilaterally set the prices, terms and conditions under which U.S. carriers are able to exchange international traffic.[183]

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[179] 47 U.S.C. § 211. Section 211 also permits the Commission to require the filing of any other contracts.

[180] 47 U.S.C. § 219.

[181] 47 U.S.C. § 220.

[182] Only those carriers with annual operating expenses that equal or exceed the indexed revenue threshold defined in § 32.9000 and have been found by the Commission to be a dominant carrier with respect to communications services are required to file depreciation change reports.

[183] *See 1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements, Report and Order and Order on Reconsideration,* 14 FCC Rcd 7963, 7974, ¶ 31 (1999).

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitors still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The domestic U.S. long distance market is competitive, although there is greater competition for high volume customers than for low volume customers. Competition in the international services markets is also increasing. These markets are rapidly changing from being dominated by a small number of national telecommunications providers to having a large number of competitors.

Advantages

The reports required by Part 43 increase the Commission's ability to ensure compliance with the Commission's rules. They also provide the Commission, other government agencies, state regulators, industry, and the public with valuable information on market and other industry trends and developments. This information is helpful to the Commission in identifying developing regulatory issues and evaluating the effects of policy choices. The contract filing requirements also assist the Commission in identifying and remedying potential instances of anti-competitive conduct. The International Settlements Policy and related requirements protect U.S. carriers and their customers from the potential exercise of market power by dominant foreign carriers.

Disadvantages

Some carriers allege that certain of the required filings are unduly burdensome. Part 43 may also require the filing of some information that is unnecessarily detailed or no longer necessary in light of competitive developments.

Recent Efforts

The Commission recently revised its ARMIS reporting requirements as part of its 1998 Biennial Regulatory Review process.[184] The Commission reduced reporting requirements for mid-sized carriers, and improved the definitions, descriptions and instructions used in preparing ARMIS reports. The Commission adopted further streamlining measures in Phase 1 of the *Comprehensive Review* proceeding.[185] Currently, the staff is undertaking additional review of the ARMIS reports in Phase 2 of the *Comprehensive Review* proceeding intended to produce further streamlining.

In 1999, the Commission adopted a sweeping reform of the longstanding international settlements policy, deregulating inter-carrier settlement arrangements between U.S. carriers and foreign non-dominant carriers on competitive routes.[186] The Commission, among other things, eliminated the international settlements

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184 *See 1998 Biennial Regulatory Review – Review of ARMIS Reporting Requirement, Report and Order,* 14 FCC Rcd 11443 (1999).

185 *Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent LECs: Phase 1,* CC Docket No. 99-253, *Report and Order,* FCC 00-78 (rel. Mar.8, 2000).

186 *See 1998 Biennial Regulatory Review: Reform of the International Settlements Policy*

policy and contract filing requirements for arrangements with foreign carriers that lack market power, and eliminated the international settlements policy for arrangements with all carriers on routes with rates for terminating U.S. calls that are at least 25 percent lower than the relevant settlement rate benchmark.

Recommendation

The staff recommends continuation of the ongoing efforts to streamline further the ARMIS reporting requirements. The staff also recommends modifying or eliminating some of the rules governing reports to be filed by carriers providing international telecommunications services. In particular, the staff recommends elimination of section 43.53 of the rules because the required reports regarding the division of international telegraph charges appear to be unnecessary now that telegraph service is no longer a major component of telecommunications traffic. In addition, this reporting requirement duplicates requirements in other rules. The staff also recommends that section 43.81 of the rules be removed from Part 43 since it is no longer in effect.

The staff also recommends that the Commission amend section 43.51 of the rules to simplify the language and to provide that copies of contracts for international services do not need to be filed with the Commission unless the contracts concern common carrier service between the U.S. and foreign points and involve a foreign carrier that has market power in that foreign market, or a U.S. carrier that has been classified as dominant on any routes included in the contract, for reasons other than a foreign carrier affiliation.

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and Associated Filing Requirements, Report and Order and Order on Reconsideration, 14 FCC Rcd 7963 (1999).

PART 51 – INTERCONNECTION

Description

Sections 251 and 252 of the Communications Act of 1934, as amended, were adopted as part of the 1996 Telecommunications Act. Most significantly, these provisions require that the incumbent local exchange carriers open their networks to competition, and are critical to fostering local exchange and exchange access competition as envisioned by Congress. Section 251 establishes distinct sets of pro-competitive requirements for telecommunications carriers, local exchange carriers, and incumbent local exchange carriers. Section 251 specifically provides that all telecommunications carriers have a duty to interconnect with other telecommunications carriers, among other things. Under section 251, local exchange carriers are subject to additional requirements concerning number portability, dialing parity, right-of-way access, and reciprocal compensation. In addition to these obligations, incumbent local exchange carriers are subject to further requirements concerning negotiation of agreements, interconnection, access to unbundled network elements, resale, notification of changes, and collocation.[187] Section 251 also provides for pricing standards and standards for incumbent carrier pricing of services offered for resale. Section 252 establishes procedures for negotiating, arbitrating, and approving interconnection agreements.[188] The Part 51 rules implement these statutory requirements.

Part 51 is organized into nine lettered sub-parts:

A – General Information
B – Telecommunications Carriers
C – Obligations of All Local Exchange Carriers
D – Additional Obligations of Incumbent Local Exchange Carriers
E – Exemptions, Suspensions, and Modifications of Requirements of Section 251 of the Act
F – Pricing of Elements
G – Resale
H – Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic
I – Procedures for Implementation of Section 252 of the Act

Purpose

Part 51 implements the requirements found in sections 251 and 252. Part 51 is intended to foster competition in the local exchange and exchange access markets by requiring that incumbent local exchange carriers open their networks to competition, and by establishing pricing standards applicable to the facilities and services that the incumbent local exchange carriers provide to their competitors. Consistent with section 251 of the Act, Part 51 also contains certain pro-competitive requirements that apply to all telecommunications carriers and competitive local exchange carriers.

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187 47 U.S.C. § 251.
188 47 U.S.C. § 252.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas.

Advantages

The Part 51 rules require incumbent local exchange carriers to open their networks to competition, and establish pricing standards. This fosters competition in the local exchange and exchange access markets. Competition in these markets will increase the choices available to consumers, as well as create incentives for increased efficiency and the more rapid deployment of new services and technology.

Disadvantages

The Part 51 rules impose some costs on incumbent local exchange carriers.

Recent Efforts

The Eighth Circuit Court of Appeals recently overturned certain of the pricing rules in Part 51, and remanded them to the Commission for further consideration.[189]

Recommendation

The staff recommends continued monitoring of the development of local exchange and exchange access competition. The staff also recommends that the Commission re-evaluate the various mechanisms for intercarrier compensation for traffic origination and termination.

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189 *Iowa Utilities Board v. FCC*, No. 96-3321 (8th Cir. rel. July 18, 2000).

PART 52 – NUMBERING

Description

Section 251(e) of the Communications Act of 1934, as amended, adopted as part of the 1996 Telecommunications Act, governs the administration of telephone numbers. It gives the Commission exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Section 251(e) also requires the Commission to create or designate one or more impartial entities to administer telecommunications numbering and to make those numbers available on an equitable basis. It also charges the Commission with establishing cost recovery mechanisms for numbering administration arrangements and number portability.

Part 52 implements the requirements of section 251(e). It contains rules governing the administration of the North American Numbering Plan, which is the basic numbering scheme for the telecommunications networks located in the United States, its territories, and other countries in North America. Part 52 also contains rules designed to ensure that users of telecommunications services can retain, at their existing locations, their existing telephone numbers when they switch from one local exchange telecommunications carrier to another. It also contains rules governing the administration of toll free telephone numbers.

Part 52 is organized into four lettered sub-parts:

A – Scope and Authority
B – Administration
C – Number Portability
D – Toll Free Numbers

Purpose

Part 52 implements the requirements of section 251(e). The purpose of the rules in Part 52 is to establish requirements to govern the administration and efficient use of telephone numbers within the United States for provision of telecommunications services.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The domestic U.S. long distance market is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

The Part 52 rules benefit the public by fostering the efficient use of telephone numbers, which are a scarce national resource, and minimizing the potential for anti-competitive behavior. They are designed to provide clear and predictable guidelines for the use of telephone numbers while minimizing administrative costs. The number portability rules are also designed to remove barriers to local exchange competition and reduce

the consumers' costs of switching to an alternative carrier by ensuring that customers can retain their local telephone number when they switch from one local carrier to another.

Disadvantages

Carriers are required to fund the costs of administering the North American Numbering Plan.

Recent Efforts

The Commission released a Report and Order and Further Notice of Proposed Rulemaking in March 2000 addressing how to meet the increased demand for telephone numbers in light of the declining quantity of available numbers. The Report and Order adopted measures that will promote more efficient allocation and use of telephone numbers, and established policies to ensure that carriers have access to the numbering resources they need to participate in the competitive telecommunications marketplace.

The Commission also released a Report and Order in July 2000 addressing whether the current method of administering toll free numbers should be replaced by a management system more suitable to a competitive environment. The North American Numbering Council will prepare a report to the Commission on this issue within the next six months.

Recommendation

The staff recommends the retention of Part 52 and the continuation of current efforts to optimize the use of numbering resources in an impartial, economically efficient manner.

PART 53 – SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

Description

Section 272 of the Communications Act of 1934, as amended, establishes safeguards applicable to Bell Operating Company (BOC) equipment manufacturing, provision of in-region interLATA toll service, and provision of interLATA information services (other than electronic publishing and alarm monitoring).[190] The Commission's Part 53 rules implement these requirements. In particular, the Part 53 rules provide that the BOCs must use a separate affiliate for certain activities, and set out structural separation, transactional, and auditing requirements. The Part 53 rules also contain provisions adopted pursuant to section 271 of the Act concerning joint marketing of local exchange and long distance services.

Part 53 is organized into six lettered subparts (three of which are reserved for future use):

A – General Information
B – Bell Operating Company Entry into InterLATA Services
C – Separate Affiliate; Safeguards
D – Manufacturing by Bell Operating Companies [reserved]
E – Electronic Publishing by Bell Operating Companies [reserved]
F – Alarm Monitoring Services [reserved]

Purpose

Part 53 generally implements the structural safeguards mandated in section 272. These separate subsidiary and auditing requirements are designed to prevent the BOCs from using their dominance in the market for local exchange and exchange access services to compete unfairly in the related markets.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume business and residential customers than for low volume customers.

Advantages

Part 53 reduces the potential for the BOCs to engage in anticompetitive behavior by leveraging their dominance in the market for local exchange and exchange access services to compete unfairly in the markets for other goods and services.

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190 47 U.S.C. § 272.

Disadvantages

Use of a structurally separate subsidiary for certain activities and compliance with the auditing requirements in Part 53 increase carrier costs.

Recent Efforts

Not applicable.

Recommendation

The staff recommends only minor changes to Part 53 at this time. In this regard, we note that much of Part 53 is statutorily mandated, including the basic requirement for the use of separate subsidiaries for certain activities and most of the structural separation and auditing requirements. Section 53.101 of the rules concerning joint marketing has sunset and should be deleted from Part 53. The section 272 provisions requiring a separate subsidiary for the provision of interLATA information services have also sunset, and the rules related to this requirement should be deleted from Part 53.

PART 54 – UNIVERSAL SERVICE

Description

Sections 214(e) and 254 of the Communications Act of 1934 direct the Commission to establish specific, predictable, and sufficient mechanisms to preserve and advance universal service.[191] Part 54 implements these provisions of the Act. Part 54 contains rules governing the operation of the Commission's four basic universal service programs: (1) the high-cost support mechanism, which provides support to keep rates affordable in high-cost areas; (2) the low-income support mechanism, which provides support to keep rates affordable for low-income consumers; (3) the schools and libraries support mechanism, which provides support for telecommunications and Internet access and internal connections for eligible schools and libraries; and (4) the rural health care support mechanism, which provides support for telecommunications services for eligible rural health care providers. In addition, Part 54 contains administrative rules governing the collection of universal service contributions and the distribution of support, as well as provisions for the creation of the Universal Service Administrative Company (USAC) to administer the universal service support mechanisms.

Part 54 is organized into ten lettered sub-parts:

A – General Information
B – Services Designated for Support
C – Carriers Eligible for Universal Service Support
D – Universal Service Support for High Cost Areas
E – Universal Service Support for Low-Income Consumers
F – Universal Service Support for Schools and Libraries
G – Universal Service Support for Health Care Providers
H – Administration
I – Review of Decisions Issued by the Administrator
J – Interstate Access Universal Service Support Mechanism

Purpose

Part 54 implements the requirements found in section 214(e) and 254. Part 54 is designed to promote universal service by ensuring that all consumers, including consumers living in rural, insular, and high-cost areas as well as low-income consumers, have access to affordable telecommunications services. It is also designed to ensure that schools, libraries, rural health care providers, and the members of the public that they serve, have access to affordable telecommunications and information services. Part 54 is designed to accomplish these goals in a competitively neutral manner by collecting support from every telecommunications carrier that provides interstate telecommunications service, and by making support available on a technologically neutral basis to any eligible service provider. This is intended to encourage the provision of service by wireless and other emerging technologies that have not been eligible to receive universal service support in the past, but may prove to be efficient alternatives to traditional wireline service in high-cost and rural areas.

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191 *See* 47 U.S.C. §§ 214(e), 254.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas.

Advantages

Part 54 serves the public interest by establishing explicit universal service mechanisms to ensure that all consumers have access to affordable telecommunications services. It also promotes competition by making explicit universal service support available to any eligible telecommunications carrier in a competitively and technologically neutral manner. This also encourages efficient entry in high-cost areas. Finally, Part 54 benefits the public by making telecommunications and information services available to qualifying schools, libraries, and rural health care providers at reduced rates.

Disadvantages

The reporting requirements necessary for the collection, calculation, and disbursement of universal service support may place administrative burdens on certain carriers. The current procedures for review of USAC's funding decisions concerning schools, libraries, and rural health care providers may also place unnecessary administrative burdens on the Commission.

Recent Efforts

Many of the Part 54 rules were adopted in 1997, and they have been revised a number of times since.[192] On June 30, 2000, the Commission released an order to promote telecommunications subscribership by those living on tribal lands.[193]

Recommendation

The staff does not recommend any major new initiatives concerning the Commission's universal service rules as part of the 2000 Biennial Regulatory Review. The staff, however, recommends that the Commission consider modifying Part 54 to streamline the process for appeals of USAC funding decisions by requiring applicants to file appeals with USAC in the first instance unless the appeals raise new or novel questions of fact, law, or policy.[194] The staff also recommends certain minor revisions to the Part 54 rules

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192 *See, e.g., Federal-State Joint Board on Universal Service, Fifth Order on Reconsideration and Fourth Report and Order*, 13 FCC Rcd 14915 (1998); *Federal-State Joint Board on Universal Service, Ninth Report and Order and Eighteenth Order on Reconsideration,* 14 FCC Rcd 20432 (1999).

193 *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, FCC 00-208 (rel. June 30, 2000).

194 *See* 47 C.F.R. § 54.719.

to remove transitional provisions that are no longer applicable. For example, section 54.701(b)-(e), concerning the now-completed merger of the Schools & Libraries Corporation and the Rural Health Care Corporation into the Universal Service Administrative Company, should be deleted.

PART 59 – INFRASTRUCTURE SHARING

Description

Section 259 of the Communications Act of 1934, as amended, requires the Commission to prescribe regulations that require incumbent LECs to make available to qualifying carriers certain public switched network infrastructure, technology, information, and telecommunications facilities and functions used to provide telecommunications services, or access to information services. Part 59 implements section 259 of the Act, by specifying the general duty of incumbent LECs to share such infrastructure with qualifying carriers (*i.e.*, carriers that fulfill universal service obligations) and setting out general terms and conditions for such sharing. Part 59 applies only when the qualifying carrier does not seek to use the shared infrastructure to offer certain services within the incumbent LEC's telephone exchange area.

Purpose

Part 59 is designed to implement the requirements of section 259. Part 59 is intended to foster the provision of advanced telecommunications and information services by small carriers. It is intended to accomplish this by allowing qualifying carriers to take advantage of the economies of scale and scope possessed by larger incumbent LECs.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas.

Advantages

Part 59 fosters the availability of advanced telecommunications and information services by articulating general rules and guidelines to define the obligations imposed by section 259 and by relying in large part on negotiations between interested parties. This negotiation-driven approach allows the parties to craft section 259 agreements that best meet their needs with minimal regulatory supervision.

Disadvantages

The rules implementing section 259 may impose costs on incumbent LECs that must share infrastructure with qualifying carriers. Part 59 minimizes these costs by relying on private negotiations to establish the precise terms for infrastructure sharing.

Recent Efforts

The Commission recently reaffirmed its negotiation-based approach to implementing section 259.[195]

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[195] *Order on Reconsideration, Implementation of Infrastructure Sharing Provisions of the Telecommunications Act of 1996*, 62 FR 9704 (rel. Apr. 27, 2000). This Order also addressed a

Recommendation

The staff recommends that the negotiation-driven, minimally-regulatory approach adopted in Part 59 be maintained and that no substantial changes be made to this Part. During the three years since Part 59 was adopted, no evidence has been presented to the Commission indicating that parties have been unable to negotiate section 259 infrastructure sharing agreements.

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number of issues concerning the use of section 259 to facilitate resale, access to intellectual property rights, and pricing of section 259 arrangements. *Id.*

PART 61 – TARIFFS

Description

Sections 203 and 204 of the Communications Act of 1934, as amended, establish tariff filing requirements applicable to common carriers.[196] Sections 201 and 202 require rates, terms and conditions to be "just and reasonable,"[197] and prohibit "unjust or unreasonable discrimination."[198] Part 61 implements these sections of the Act by establishing rules that perform two major functions. First, the Part 61 rules establish requirements governing the filing, form, content, public notice periods, and accompanying support materials for tariffs. Second, Part 61 sets forth the pricing rules and related requirements that apply to incumbent local exchange carriers (LECs) that are subject to price cap regulation.

Part 61 is organized into ten lettered sub-parts:

A – General
B – Rules for Electronic Filing
C – General Rules for Nondominant Carriers
D – General Tariff Rules for International Dominant Carriers
E – General Rules for Dominant Carriers
F – Specific Rules for Tariff Publications of Dominant and Nondominant Carriers
G – Concurrences
H – Applications for Special Permission
I – Adoption of Tariffs and Other Documents of Predecessor Carriers
J – Suspensions

Purpose

Part 61 is intended to implement sections 203 and 204. The Part 61 tariffing rules are designed to provide consumers with information on the rates, terms and conditions for telecommunications services. They are also intended to ensure that the carriers provide the Commission and the public with information necessary for evaluating the lawfulness of tariff rates, terms and conditions. The price cap rules in Part 61 are designed to ensure that the rates of price cap carriers are "just and reasonable" and "not unjustly or unreasonably discriminatory." At the same time, the price cap rules, in conjunction with the Part 69 access charge rules, are designed to create incentives for increased carrier efficiency, to streamline the tariff review process, and to allow the carriers some degree of pricing flexibility.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitors still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The domestic U.S. long distance market is competitive, although there is greater competition for high volume customers than for low volume customers. Competition in the international services markets

196 47 U.S.C. §§ 203-04.
197 47 U.S.C. § 201.
198 47 U.S.C. § 202.

is also increasing. These markets are rapidly changing from being dominated by a small number of national telecommunications providers to having a large number of competitors.

Advantages

The Part 61 tariffing rules benefit the public by providing information on the rates, terms, and conditions for telecommunications services. In addition, the requirements for support materials facilitate review of the lawfulness of the tariffs. The requirements for support materials thus reduce the cost of enforcing Commission pricing rules, and permit interested parties to challenge tariff provisions.

The price cap rules contained in Part 61 protect customers by capping the rates charged by the LECs and limiting the potential for LECs to exercise market power in an anticompetitive manner. They also foster carrier efficiency, streamline the tariff process, and allow the carriers some degree of pricing flexibility.

Disadvantages

The tariff filing requirements may impede competition by reducing carrier flexibility and potentially foster oligopoly pricing by requiring the public disclosure of rates, terms, and conditions. Furthermore, the requirement for tariff support materials imposes some preparation costs on the carriers. Over time, the price cap rules may reduce economic efficiency by limiting carrier pricing flexibility.

Recent Efforts

As part of the 1998 Biennial Regulatory Review process, the Commission conducted a comprehensive review of Part 61, and eliminated a number of rules that were no longer necessary.[199] More recently, the Commission also addressed the price cap rules in a comprehensive manner in the CALLS proceeding.[200] In addition, the Commission is in the process of implementing mandatory de-tariffing for domestic interexchange toll service,[201] and is considering doing the same for competitive local exchange carrier services.[202]

Recommendation

At this time, the staff generally recommends retaining the existing Part 61 requirements, with continued monitoring of competitive developments to permit changes as warranted by increased competition. The staff recommends, however, that the Commission extend mandatory de-tariffing to the international services of non-dominant interexchange carriers, including Commercial Mobile Radio Service providers and U.S. carriers classified as dominant solely due to foreign affiliations. We also note that the inter-carrier compensation proceeding recommended elsewhere in this report could result in some revisions to Part 61.

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199 *1998 Biennial Regulatory Review – Part 61 of the Commission's Rules and Related Tariff Requirements, Report and Order and Further Order on Reconsideration*, 14 FCC Rcd 12293 (1999).

200 *CALLS Order*, 15 FCC Rcd 12962.

201 *Access Charge Reform*, DA 00-1268 (rel. June 16, 2000)

202 *Access Charge Reform, Fifth Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 14221, 14234 (1999).

PART 63 – EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

Description

Section 214 of the Communications Act of 1934, as amended, provides that no carrier shall undertake the construction of a new line or extension of any line, or shall acquire or operate any line, or extension thereof, without first having obtained a certificate from the Commission that the present or future public convenience and necessity require the construction and/or operation of such extended line. Section 214 also provides that no carrier shall discontinue, reduce or impair service to a community without first having obtained a certificate from the Commission that neither the present nor future public convenience and necessity will be adversely affected by such action.[203] Part 63 of our rules sets forth specific information that must be included in a section 214 application for market entry or exit by a common carrier.[204]

Part 63 is organized into five sub-designations:

Extensions and Supplements (§§ 63.01-63.25)
General Provisions Relating to All Applications Under Section 214 (§§ 63.50-63.53)
Discontinuance, Reduction, Outage and Impairment (§§ 63.60-63.100)
Contents of Applications; Examples (§§ 63.500-63.601)
Request for Designation as a Recognized Private Operating Agency (§§ 63.701-63.702)

Purpose

Part 63 sets out the requirements for obtaining a section 214 authorization to provide or discontinue service. A section 214 application is a request for authority to provide or to discontinue services pursuant to section 214 of the Communications Act. A carrier must receive a section 214 authorization prior to initiating or discontinuing service.

The primary purpose in adopting entry criteria under section 214 is to promote effective competition in the U.S. telecommunications services market. With regard to the construction of facilities, Commission authorization is needed to protect consumers from being charged by carriers for unneeded facilities. Commission authorization for discontinuance of service protects consumers from loss of service. Domestic markets have become sufficiently competitive that the Commission has substantially deregulated the procedures for obtaining section 214 authorizations. For international telecommunications services, the section 214 authorization requirement serves several purposes. It enables the Commission to screen applications for risks to competition and to deny or condition authorizations as appropriate. The review process also includes consultation with Executive Branch agencies on national security, law enforcement, foreign policy, and trade concerns that may be unique to the provision of international services. The section 214 authorization requirement also helps us monitor competitive conditions along U.S. international routes as well as each carrier's compliance with our rules and policies governing the provision of international services, and it also serves to inform small carriers of their special obligations as providers of international service.

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203 47 U.S.C. § 214(a).

204 47 C.F.R. Part 63.

Part 63 also contains rules to protect U.S. consumers and carriers from foreign telecommunications carriers exerting market power in the U.S. telecommunications market. For example, the No Special Concessions rule prohibits U.S. international carriers from agreeing to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market.[205] Part 63 also contains procedures for a party to be designated as a Recognized Private Operating Agency.[206]

Analysis

Status of Competition

There is a significant amount of competition in the provision of domestic long distance services. Competition for local exchange services is increasing. Competition in international services is also increasing, and the market is rapidly changing from a system that used to be dominated by a small number of national telecommunications providers (generally the incumbent national monopoly telephone companies) to a system with large numbers of new entrants and competitors.

Advantages

Part 63 provides carriers and the public with procedures to be followed to obtain authorization to construct facilities, provide service, and discontinue service. The rules provide certainty regarding what information must be filed with the Commission, how long action on the application will take, the types of services that can be provided over the facilities, and in what circumstances a carrier may discontinue service.

Disadvantages

The rules can be administratively burdensome on the carriers and the Commission. Some of the rules are duplicative, and some are unclear. The requirement for Commission authorization may also delay the introduction of new services to the public.

Recent Efforts

The increasing number of common carriers providing service and the resulting growth of competition have allowed the Commission to reduce the administrative burdens placed on carriers regarding market entry and exit. In 1999, the Commission amended the rules in Part 63 to de-regulate market entry and streamline market exit filing requirements, under section 214, for domestic carriers.[207] The new rules confer "blanket" section 214 certification for new lines of all domestic carriers, exempt line extensions and video programming services from section 214 requirements, and provide that all section 214 applications to discontinue domestic service will be automatically granted unless the Commission notifies the applicant otherwise. As a result of this deregulation, the only section 214 applications the Commission receives for domestic service are for market exit, under which a carrier must get discontinuance authority and notify customers when it stops providing service to a community. Market entry for domestic services is self-executing, and no applications are needed.

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[205] 47 C.F.R. § 63.14.

[206] 47 C.F.R. §§ 63.701, 63.702.

[207] *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996,* 14 FCC Rcd 11364 (1999).

Regarding section 214 authorizations for international telecommunications services, in 1996 the Commission created global section 214 authorizations, reduced paperwork obligations, streamlined tariff requirements for non-dominant international carriers, and ensured that essential information is readily available to all carriers and users. [208] In 1999, the Commission further streamlined its procedures for granting international section 214 authorizations so that now approximately 99 percent of international section 214 applications filed qualify for streamlined processing. As a result, most new carriers are authorized to provide international services on most international routes 14 days after public notice of an application. Carriers already providing service are able to complete *pro forma* transactions and assignments of their authorizations without prior Commission approval and to provide service through their wholly owned subsidiaries without separate Commission approval. Carriers under common ownership with an already-authorized carrier are able to provide the same authorized services after only a minimal waiting period.[209]

Recommendation

The staff recommends that certain sections of Part 63 be amended or deleted, but that most of the existing sections be retained at this time. We recommend that the sections which were amended in 1999 to lower entry barriers for domestic carriers be retained because they minimize transaction costs, streamline the applications process, promote competition, and increase consumer choice. The sections related to the form of applications to be filed (*i.e.*, amendments, additional information, copies, fees, filing periods, and form (such as paper size)) should be retained because administratively they provide clear and predictable rules. We find, on the other hand, that the rules describing and defining the types of discontinuance of services for which section 214 authorization must be obtained are largely obsolete, and are duplicative, and thus recommend that they be considered for modification and consolidation. The staff has also identified several duplicative rules that should be considered for elimination, and a number of rules that are unclear, ambiguous or contain errors that the staff recommends be clarified or corrected.

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208 *Streamlining the International Section 214 Authorization Process and Tariff Requirements, Report and Order*, 11 FCC Rcd 12884, (1996).

209 *See 1998 Biennial Regulatory Review-Review of International Common Carrier Regulations, Report and Order*, 14 FCC Rcd 4909 (1999) (*1998 International Common Carrier Biennial Regulatory Review Order*), *recon. pending*.

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS, SUBPART A – TRAFFIC DAMAGE CLAIMS

Description

Subpart A requires carriers engaged in radio-telegraph, wire-telegraph, or ocean-cable service to maintain separate files for each damage claim of a traffic nature filed with the carrier. Subpart A also prohibits such carriers from making payments as a result of any traffic damage claim in excess of the total amount collected for the message or messages from which the claim arose unless the claim is presented in writing and sets forth the reason for the claim. These rules are based on the Commission's authority pursuant to sections 1, 4, 201-205, and 220 of the Communications Act, as amended.[210]

Purpose

Subpart A requires that certain types of carriers maintain records concerning damage claims, and limits damage payments absent a written claim.

Analysis

Status of Competition

Telegraph service, which appears to be the primary focus of this subpart, is no longer a major service offering.

Advantages

Ensures that certain carriers maintain records concerning damage claims.

Disadvantages

Subpart A appears to focus on the provision of telegraph service, which is no longer a major service offering.

Recent Efforts

No recent action.

Recommendation

The staff recommends the Commission consider removing subpart A since it appears to be outdated.

[210] 47 U.S.C. §§ 151, 154, 201-205 and 220.

PART 64, SUBPART B – RESTRICTIONS ON INDECENT TELEPHONE MESSAGE SERVICES

Description

Section 223(b) of the Communications Act of 1934, as amended, prohibits use of the telephone for the purpose of obscene commercial communications. It also prohibits use of the telephone for indecent commercial communications without the consent of the other party and prohibits use of the telephone for indecent commercial communications which are available to anyone under 18 years of age.[211] Section 223(b) also provides for certain defenses to prosecution for making indecent commercial communications.

Subpart B implements the provisions of section 223(b) relating to defenses to prosecution for indecent commercial communications. Under section 64.201, a provider of indecent commercial telephone communications has a defense to prosecution if the provider has notified the common carrier that the provider is engaged in providing indecent commercial communications, and does one of the following: (1) requires credit card payment before transmitting the message; (2) requires an authorized access or identification code, which has been established by mail, before transmitting the message; or (3) scrambles the message so that the audio is unintelligible and incomprehensible without a descrambler. Subpart B also provides a defense to prosecution for message sponsor subscribers to mass announcement services if they ask the carrier to take certain precautions. In addition, subpart B bars common carriers, to the extent technically feasible, from providing access to obscene or indecent communications from the telephone of anyone who has not previously requested access to such services in writing if the carrier provides billing and collection for the provider of the obscene or indecent communications.

Purpose

Subpart B is intended to implement the statutory restrictions on the commercial provision by telephone of indecent communications, consistent with the First Amendment. In particular, subpart B is intended to protect minors and non-consenting adults from indecent communications.

Analysis

Status of Competition

Not relevant.

Advantages

Subpart B protects minors and non-consenting adults from indecent commercial telephone communications within a framework designed to be consistent with the First Amendment.

Disadvantages

Restrictions affecting speech are subject to potential challenge as inconsistent with the First Amendment.

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[211] 47 U.S.C. § 223(b).

Recent Efforts

No recent developments.

Recommendation

The staff does not recommend changes to subpart B as part of the 2000 Biennial Review.

PART 64, SUBPART C – FURNISHING OF FACILITIES TO FOREIGN GOVERNMENTS FOR INTERNATIONAL COMMUNICATIONS

Description

Subpart C, consisting of section 64.301 of the Commission's rules, requires U.S. common carriers to provide services and facilities for communications to any foreign government, upon reasonable request. If a foreign government refuses to provide services or facilities for communications to the U.S. Government, U.S. carriers, to the extent specifically ordered by the Commission, shall deny equivalent services or facilities to the foreign government.[212] This rule was adopted pursuant to the Commission's authority under sections 201, 214, 303, and 308 of the Communications Act, as amended.[213]

Purpose

Section 64.301 is intended to ensure that the U.S. Government has access to communications services overseas. It permits the Commission to order U.S. carriers to deny foreign governments access to communications services in the United States if the foreign government has denied the U.S. government access to communications services or facilities overseas.

Analysis

Status of Competition

Competition in the international services markets is increasing. These markets are rapidly changing from being dominated by a small number of national telecommunications providers to having a large number of competitors.

Advantages

The rule helps to ensure that the U.S. Government has access to communications services and facilities overseas.

Disadvantages

The Commission rarely exercises this authority.

Recent Efforts

The Commission last revised this rule in 1963, and would need to consult with the State Department before doing so again.

Recommendation

The staff recommends retaining the rule at this time.

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212 47 C.F.R. § 64.301.

213 47 U.S.C. §§ 201, 214, 303 and 308.

PART 64, SUBPART D – PROCEDURES FOR HANDLING PRIORITY SERVICES IN EMERGENCIES

Description

Subpart D requires that common carriers maintain, provision, and, if disrupted, restore facilities and services in accordance with the policies and procedures in Appendix A to Part 64. Appendix A establishes policies and procedures and assigns responsibilities for the National Security Emergency Preparedness (NSEP) Telecommunications Service Priority (TSP) System. These requirements are based on the Commission's authority under sections 1, 201-05 of the Communications Act as amended.[214]

Purpose

Subpart D is designed to ensure that critical communications services are available during times of national emergency.

Analysis

Status of Competition

Not Relevant.

Advantages

Subpart D promotes public safety and national security by establishing clear procedures and criteria for ensuring that critical communications services are available in times of national emergency.

Disadvantages

Complying with these requirements may impose administrative costs on carriers.

Recent Effort

There have not been any recent actions.

Recommendation

The staff does not recommend changes in subpart D.

[214] 47 U.S.C. §§ 151, 201-05.

PART 64, SUBPART E – USE OF RECORDING DEVICES BY TELEPHONE COMPANIES

Description

Subpart E governs the use of recording devices by telephone common carriers to record interstate or foreign telephone conversations between members of the public and telephone company agents or employees. Subpart E requires that telephone companies wishing to record such conversations must: (1) obtain the prior consent of all parties; (2) give a verbal notification prior to recording; and (3) accompany the use of the recording device with an automatic tone warning device that produces a distinct signal at regular intervals. These requirements are based on the Commission's authority under sections 1, 2, 4, 201, and 205 of the Communications Act as amended.[215]

Purpose

Subpart E is intended to protect privacy interests.

Analysis

Status of Competition

Not relevant.

Advantages

Subpart E is designed to protect privacy.

Disadvantages

Subpart E appears to duplicate federal and state electronic privacy statutes, including 18 U.S.C. § 2510 *et seq.*, and 47 U.S.C. §1004. It also references outdated technology.

Recent Effort

There have not been any recent changes.

Recommendation

The staff recommends that the Commission consider removal of subpart E.

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[215] 47 U.S.C. §§ 151, 152, 154, 201 and 205.

PART 64, SUBPART F – TELECOMMUNICATIONS RELAY SERVICES AND RELATED CUSTOMER PREMISES EQUIPMENT FOR PERSONS WITH DISABILITIES

Description

Title IV of the Americans with Disabilities Act of 1990 (ADA), codified as section 225 of the Communications Act of 1934, as amended, requires the Commission to ensure that telecommunications relay service (TRS) is available, "to the extent possible and in the most efficient manner," to individuals with hearing or speech disabilities in the United States.[216] Section 225 defines TRS as telephone transmission services that make it possible for an individual with a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner functionally equivalent to someone without such a disability.

Part 64, subpart F was adopted to implement section 225 of the Act. The rules provide minimum functional, operational, and technical standards for TRS programs. The rules also establish a cost recovery and a carrier contribution mechanism for the provision of interstate TRS and require states to establish cost recovery mechanisms for the provision of intrastate TRS.

The rules give states a strong role in ensuring the availability of TRS by treating carriers as in compliance with their statutory obligations if they operate in a state that has a relay program certified as compliant by this Commission pursuant to rules in subpart F.

Purpose

Subpart F is designed to implement section 225. Subpart F is intended to facilitate communication by persons with a hearing or speech disability by ensuring that interstate and intrastate TRS is available throughout the country, and by ensuring uniform minimum quality standards for such relay services.

Analysis

Status of Competition

There is competition in the interstate TRS market, but very little competition in the intrastate TRS market.

Advantages

The Commission's TRS rules ensure that individuals with hearing or speech disabilities receive the same quality of service when they make relay calls, regardless of where their call originates or terminates. The rules also ensure that the telecommunications service they receive is "functionally equivalent" to that available to persons who do not have such disabilities. The rules are particularly important to ensure service quality because there is so little intrastate competition among intrastate TRS providers.

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[216] Pub. Law No. 101-336, § 401, 104 Stat. 327, 366-69 (1990) (adding section 225 to the Communications Act of 1934, as amended, 47 U.S.C. § 225).

Disadvantages

Technology is changing rapidly, and the regulations require relatively frequent modification to ensure functional equivalence to voice telephone service. For instance, in March 2000, the Commission adopted rules modifying Part 64, subpart F to address the provision of new types of relay services.

Recent Efforts

In March 2000, the Commission revised subpart F to, among other things: (1) modify the definition of telecommunications relay services to include speech-to-speech (STS) relay services (which provide a telecommunications link for persons with speech disabilities), video relay interpreting (VRI), (which facilitates telecommunications for individuals who use sign language), and non-English language relay services; (2) require that all relay services, whether mandatory or voluntary, funded by intrastate and interstate TRS funds, comply with minimum service quality standards; (3) require provision of STS relay services and permit reimbursement for the voluntary provision of VRI service; (4) modify the minimum service quality standards to better ensure functional equivalency; (5) clarify that the existing rules require outreach to all callers and for all forms of TRS; and (6) improve the Commission's process for handling TRS complaints.[217]

In August 2000, the Commission revised subpart F to require all carriers providing telephone voice transmission service to provide access via the 711 dialing code to all relay services as a toll free call.[218]

Recommendation

The staff does not recommend modification of subpart F as part of the 2000 Biennial Review.

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[217] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Further Notice of Proposed Rulemaking*, FCC 00-56 (rel. Mar. 6, 2000) (*Improved TRS Order*)

[218] *The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, *Second Report and Order*, FCC 00-257 (rel. Aug. 9, 2000) (*N11 Second Report and Order*).

PART 64, SUBPART G – FURNISHING OF ENHANCED SERVICES AND CUSTOMER PREMISES EQUIPMENT BY BELL OPERATING COMPANIES; TELEPHONE OPERATOR SERVICES

Description

Subpart G addresses two distinct sets of issues. First, it contains rules concerning the provision of enhanced services and customer premises equipment (CPE) by Bell Operating Companies. Second, it contains rules governing the provision of operator services. These rules were adopted pursuant to the Commission's authority under sections 4, 201-205, 403, and 404 of the Act, as amended.[219]

The Bell Operating Companies may provide enhanced services and CPE pursuant to nonstructural safeguards established in the *Computer III*[220] (enhanced services) and *Furnishing of CPE* [221] proceedings, or through a separate subsidiary as provided in section 64.702 of the Commission's rules. If a Bell Operating Company provides enhanced services or CPE through a separate subsidiary, the separate subsidiary must: (1) obtain all transmission facilities necessary for the provision of enhanced services pursuant to tariff; (2) operate independently, with its own books of accounts, separate officers, personnel, and computer facilities; (3) deal with any affiliated manufacturing entity on an arm's length basis; and (4) compensate the Bell Operating Company for any research or development performed for the subsidiary. Section 64.702 requires that transactions between the subsidiary and the parent or any other affiliate be put in writing, and bars Bell Operating Companies from engaging in marketing or sales on behalf of a CPE or enhanced services subsidiary. The Bell Operating Company must also obtain Commission approval of the capitalization plans for any such separate subsidiary. In addition, section 64.702 bars all common carriers from providing CPE in conjunction with common carrier communications services.

The remainder of subpart G addresses the provision of telephone operator services, and certain activities by call aggregators.[222] These rules require that operator service providers identify themselves at the beginning of each call and provide consumers with information concerning their rates. The rules also prohibit call blocking and require that customers be able to obtain access to the operator services provider of their choice. In addition, subpart G contains restrictions on charges related to the provision of operator services, minimum standards for routing and handling of emergency telephone calls, and rules governing the filing of informational tariffs and the provision of operator services for prison inmates

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219 47 U.S.C. §§ 154, 201-205, 403 and 404.

220 *Amendment of Section 64.702 of the Commission's Rules and Regulations* (*Computer III*), *Report and Order, Phase I*, 104 FCC 2d 958 (1986) (subsequent citations omitted).

221 *Furnishing of Customer Premises Equipment by the Bell Operating Companies and the Independent Telephone Companies*, 2 FCC Rcd 143 (1987), *aff'd sub nom., Illinois Bell Telephone Co. v. FCC*, 883 F.2d 104 (D.C. Cir.1989).

222 Operator services refer to "any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call," subject to certain exceptions. 47 C.F.R. § 64.708(i). An "aggregator" is "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls, using a provider of operator services." 47 C.F.R. § 64.708(b).

Purpose

Subpart G establishes safeguards for the provision of enhanced services and CPE by Bell Operating Companies. These measures are intended to prevent the Bell Operating Companies from using their power in the local exchange market to adversely affect competition in other adjacent markets.

The subpart G rules governing the provision of operator services protect consumers by ensuring that they have access to useful information about the rates charged by operator service providers, and that they are able to reach the operator service provider of their choice. The rules also promote public safety by prescribing minimum standards for operator service provider and call aggregator handling of emergency telephone calls.

Analysis

Status of Competition

The markets for both enhanced services and CPE are competitive. The operator services market is becoming increasingly competitive, although consumers may not benefit fully from this competition due to a lack of consumer awareness about the choices available to them, especially when using payphones.

Advantages

Subpart G is designed to foster competition by preventing the Bell Operating Companies from using their power in the local exchange market to adversely affect competition in the provision of enhanced services and CPE. The provisions of subpart G concerning operator services are designed to protect consumers from excessive charges for such services and ensure that consumers are able to reach the interexchange carrier of their choice.

Disadvantages

The separate subsidiary requirements impose additional costs on the Bell Operating Companies. The rules concerning operator services impose some administrative costs on aggregators and operator service providers.

Recent Efforts

As part of its 1998 Biennial Review, the Commission is considering eliminating section 64.702(c), which prohibits common carriers from bundling CPE with regulated communications services. The Commission tentatively concluded that the CPE market is sufficiently competitive to justify eliminating this restriction.[223]

The Commission adopted amendments to the subpart G rules governing operator service providers on July 12, 1999. These rule changes require that aggregators update the consumer information they must post on

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[223] *Policy and Rules Concerning the Interstate, Interexchange Marketplace; 1998 Biennial Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets, Further Notice of Proposed Rulemaking*, FCC Rcd 21531 (1998).

or near public telephones as soon as possible, but no later than 30 days after the aggregator changes the pre-subscribed operator service provider.[224]

Recommendation

The staff does not recommend further changes in subpart G as part of the 2000 Biennial Review.

[224] *Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators, CC Docket No. 94-58, Second Report and Order*, 14 FCC Rcd 16569 (1999).

PART 64, SUBPART H – EXTENSION OF UNSECURED CREDIT FOR INTERSTATE AND FOREIGN COMMUNICATIONS SERVICES TO CANDIDATES FOR FEDERAL OFFICE

Description

Part 64 subpart H, implements section 401 of the Federal Election Campaign Act of 1971 which requires the Commission to promulgate rules governing the extension of unsecured credit for foreign or interstate communications services to candidates for Federal office.[225] Part 64, subpart H requires certain carriers[226] to file periodic reports with the Commission detailing the terms of any unsecured credit extended by the carrier to, or on behalf of, a candidate for federal office. In addition, subpart H requires carriers to extend unsecured credit on substantially equal terms to all candidates and other persons on behalf of any candidate for the same office.[227]

Purpose

The purpose of subpart H is to assist the Commission in monitoring unsecured credit arrangements between carriers and candidates for federal office, pursuant to the Federal Election Campaign Act. It is also intended to ensure that such agreements are extended on substantially equal terms to all candidates for the same office.[228]

Analysis

Status of Competition

Competition in the local exchange access market is growing, although competitors still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed much more rapidly than competition for residential customers or customers in rural areas. The U.S. market for domestic long distance service is competitive, although there is greater competition for higher volume business and residential customers than for low volume customers.

Advantages

The subpart H reporting requirements and limited disclosure rules provide an efficient means of monitoring unsecured credit arrangements between carriers and candidates for federal office. The rules also are designed to ensure that carriers do not favor any one candidate with regard to unsecured credit arrangements.

Disadvantages

These rules involve some additional administrative burdens for carriers.

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225 47 C.F.R. § 64.801.

226 The report filing requirement is limited to carriers with operating revenues exceeding $1 million for the preceding year. 47 C.F.R. § 64.804 (g).

227 47 C.F.R. § 64.804 (b)

228 Section 401, Federal Election Campaign Act of 1971, Pub. Law No. 92-225.

Recent Efforts

There have been no significant changes in recent years.

Recommendation

The staff recommends the Commission retain subpart H.

PART 64, SUBPART I – ALLOCATION OF COSTS

Description

Section 254(k) of the Communications Act, as amended, requires the Commission, with respect to interstate services, to establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included within the definition of universal service bear no more than a reasonable allocation of joint and common costs of facilities used to provide these services. The requirements in subpart I are also based on the Commission's authority under sections 201 and 220 of the Communications Act, as amended.[229] Subpart I of the Commission's rules prescribes procedures for the allocation of carriers' costs between regulated and non-regulated services. It provides that all incumbent LECs required to separate regulated and non-regulated costs[230] shall use the attributable cost method of cost allocation and lists a number of cost allocation principles that such carriers must follow. Subpart I provides that all carriers required to allocate costs between regulated and non-regulated activities are also subject to the affiliate transactions rules. Subpart I also requires that all incumbent LECs with annual operating revenues at or above a specified indexed level (currently $114 million) file cost allocation manuals (CAMs) with the Commission. Finally, subpart I provides that all carriers required to file CAMs must also engage independent auditors to audit their compliance with the Commission's cost allocation requirements.

Purpose

The subpart I rules are designed to implement section 254(k) and are intended to foster competition and protect consumers by preventing cross-subsidization between regulated and non-regulated services provided by carriers subject to the cost allocation requirement.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas.

Advantages

The subpart I rules protect consumers by helping to ensure that carriers' less competitive regulated services do not subsidize competitive ventures. This also helps to prevent carriers from competing unfairly in other markets.

Disadvantages

The cost allocation and affiliate transaction rules impose administrative costs on carriers subject to these requirements.

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[229] 47 U.S.C. §§ 201 and 220.

[230] Average Schedule companies do not do cost studies and do not perform cost allocations pursuant to Part 64, subpart I.

Recent Efforts

Subpart I has been amended within the past few years to eliminate pre-filing requirements for CAM cost apportionment and time reporting changes, and to reduce the auditing requirements for mid-sized incumbent local exchange carriers.[231] The Common Carrier Bureau has held workshops to discuss, among other things, proposals for additional changes to CAM requirements for mid-size carriers.[232]

Recommendation

The staff recommends that the Commission consider additional changes to CAM requirements in Phase II of the *Comprehensive Accounting Review* proceeding.

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[231] *See Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 1, Report and Order*, FCC 00-78 (rel. Mar. 8, 2000) (*Comprehensive Accounting Review* proceeding).

[232] Common Carrier Bureau Announces A Series of Workshops for Phase 2 of the Comprehensive Review of Accounting and Reporting Requirements, *Public Notice*, DA 00-754, Apr. 5, 2000, at 1. *See also* Common Carrier Bureau Announces Mid-Sized Carrier Workshop for Phase 2 of the Comprehensive Review of Accounting and Reporting Requirements, *Public Notice*, DA 00-926, Apr. 26, 2000.

PART 64, SUBPART J – INTERNATIONAL SETTLEMENTS POLICY AND MODIFICATION REQUESTS

Description

subpart J requires that carriers request Commission approval for changes in the accounting rates for international telecommunications services unless the route involved is exempt from the Commission's International Settlements Policy (ISP).[233] The ISP requires that U.S. telecommunications carriers pay nondiscriminatory rates for termination of international traffic in foreign countries.[234] subpart J also sets forth the information which must be contained in a modification request and the procedures that govern Commission consideration of such requests.[235] These requirements are based on the Commission's authority pursuant to sections 1, 201, 202, 203, and 309 of the Communications Act, as amended.[236]

Purpose

The requirement for filing accounting rate modification requests set out in Subpart J is intended to prevent the exercise of market power by foreign carriers. In particular, it assists the Commission in ensuring compliance with the ISP and the Commission's Benchmarks Policy.[237] The ISP was adopted as a result of the Commission's concern that a foreign carrier with market power would have the ability to "whipsaw" competing U.S. international carriers by discriminating among them, and /or by unilaterally setting the prices, terms, and conditions under which U.S. carriers are able to exchange traffic.[238] Such actions by foreign carriers would prevent U.S. carriers from obtaining lower accounting rates that would benefit U.S. consumers.

Analysis

Status of Competition

Competition in the international services markets is increasing. These markets are rapidly changing from being dominated by a small number of national telecommunications providers to having a large number of competitors.

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[233] An accounting rate is the price a U.S. facilities-based carrier negotiates with a foreign carrier for handling one minute of international traffic. Each carrier's portion of the accounting rate is referred to as the settlement rate.

[234] 47 C.F.R. § 43.51(e).

[235] 47 C.F.R. § 64.1001.

[236] 47 U.S.C. §§ 151, 201, 202, 203 and 309.

[237] The Commission has established benchmarks that govern the international settlement rates that U.S. carriers may pay foreign carriers to terminate international traffic originating in the United States. *See International Settlement Rates, Report and Order*, 12 FCC Rcd 19806 (1997), *aff'd sub nom. Cable and Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999), *Report and Order on Reconsideration and Order Lifting Stay*, 14 FCC Rcd 9256 (1999).

[238] *See 1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements, Report and Order and Order on Reconsideration*, 14 FCC Rcd 7963, 7974 ¶ 31 (1999).

Advantages

Subpart J is designed to prevent the exercise of market power by foreign carriers, and facilitate the negotiation of lower accounting rates by U.S. international carriers to the benefit of American consumers.

Disadvantages

The subpart J requirements may be too restrictive or over-broad.

Recent Efforts

The Commission reviewed its International Settlements Policy as part of its 1998 biennial review.[239] In that proceeding, the Commission made several changes to the ISP, deregulating inter-carrier settlement arrangements between U.S. carriers and foreign non-dominant carriers on competitive routes. The Commission, among other things, eliminated the international settlements policy and contract filing requirements for arrangements with foreign carriers that lack market power, and eliminated the international settlements policy for arrangements with all carriers on routes where rates to terminate U.S. calls are at least 25 percent lower than the relevant settlement rate benchmark. The Commission also adopted procedural changes to simplify the accounting rate filing requirements, including the elimination of the requirement that carriers making accounting rate filings with the Commission serve every carrier that provides service on the international route with a copy of the filing. Instead, the Commission encouraged carriers to make their accounting rate filings electronically over the International Bureau Electronic Filing System.[240]

Recommendation

The staff does not believe that further amendments to subpart J are necessary at this time, and recommends retaining the rule.

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[239] *1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements, Report and Order and Order on Reconsideration,,* 14 FCC Rcd 7963 (1999); *see also,* FCC Announces Elimination of Existing Service Requirement in 64.1001(k), Public Notice, DA 99-1558 (rel. Aug. 6, 1999).

[240] *See* FCC Announces Elimination of Existing Service Requirement in 64.1001(k), Public Notice, DA 99-1558 (rel. Aug. 6, 1999).

PART 64, SUBPART K – CHANGING LONG DISTANCE SERVICE

Description

Section 258 of the Communications Act of 1934, as amended,[241] requires the Commission to prescribe verification procedures for telecommunications carriers to use in confirming subscribers' decisions to change local exchange or long distance telephone carriers. Section 258 provides that a carrier that fails to comply with the Commission's verification procedures will be liable to the subscriber's authorized carrier for all amounts paid by the subscriber after the violation. Subpart K implements section 258 of the Act by requiring telecommunications carriers to follow specific procedures with respect to changes in subscribers' preferred carriers. The rules also absolve subscribers of liability for charges billed by unauthorized carriers in certain cases, impose liability on unauthorized carriers for all charges collected from subscribers, and establish procedures to govern preferred carrier freezes.

Purpose

Subpart K is intended to implement section 258 of the Act by attempting to eliminate the fraudulent practice of "slamming," or changing a subscriber's authorized carrier without the subscriber's knowledge or explicit authorization. Subpart K is also designed to foster consumer choice and facilitate fair competition in the market for telecommunications services

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

Subpart K reduces fraud by deterring slamming, fosters consumer choice, and facilitates fair competition.

Disadvantages

Compliance with the safeguards in subpart K may increase carriers' costs to some degree.

Recent Efforts

In May 2000, the Commission modified the slamming liability rules and the procedures contained in subpart K.[242] Among other things, the Commission modified the liability rules in response to industry

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241 47 U.S.C. § 258.

242 *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, *First Order on Reconsideration*, FCC 00-135 (rel. May 3, 2000).

concerns about complexity and expense of implementation and permitted state regulatory commissions to become the primary forums for resolving slamming complaints. In June 2000, the D.C. Circuit lifted its May 1999 stay of the previous liability rules. The new rules will become effective later this year.

In July 2000, the Commission revised other aspects of its slamming rules to improve the carrier change process for both subscribers and carriers while making it more difficult for unscrupulous carriers to perpetrate slams.[243] Among other things, the Commission allowed the authorization and verification of carrier changes using the Internet, consistent with the provisions of the Electronic Signatures in Global and National Commerce Act.[244] The revised rules will become effective later this year.

Recommendation

The staff does not recommend further changes to subpart K as part of the 2000 Biennial Review.

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[243] *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Third Report and Order and Second Order on Reconsideration*, FCC 00-255 (rel. Aug. 15, 2000).

[244] S. 761, 106th Cong., 2nd Sess. (signed into law June 30, 2000).

PART 64, SUBPART L – RESTRICTIONS ON TELEPHONE SOLICITATION

Description

Section 227 of the Communications Act, as amended, imposes restrictions on the use of automatic telephone dialing systems ("autodialers"), artificial or prerecorded messages, and telephone facsimile machines, and it specifically requires that the Commission adopt rules to implement these protections.[245] Section 227 also directs the Commission to conduct proceedings to consider the need to protect residential telephone subscribers from unsolicited telephone calls. The subpart L rules contain measures designed to implement these provisions of the statute. Among other things, the subpart L rules require that telephone solicitors maintain company-specific lists of residential subscribers who do not wish to receive further solicitations. In addition, the subpart L rules contain restrictions on the disclosure of subscriber billing name and address information.

Purpose

The subpart L rules are intended to implement section 227 of the Act, and protect subscriber privacy and public safety without unnecessarily restricting legitimate telephone marketing and sales.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

Subpart L protects subscriber privacy and public safety without unnecessarily interfering with legitimate telephone marketing.

Disadvantages

Subpart L restricts the ability of telemarketers to place unsolicited calls at will.

Recent Efforts

There have not been any significant recent actions.

Recommendation

The staff does not recommend changes in subpart L at this time.

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[245] 47 U.S.C. § 227. *See also* 47 U.S.C. § 152(b).

PART 64, SUBPART M – PROVISION OF PAYPHONE SERVICE

Description

Subpart M implements section 276 of the Communications Act of 1934, as amended, concerning the provision of payphone service.[246] The subpart governs the compensation of payphone providers by carriers that receive calls from payphones, requires states to review and remove any of their regulations that limit the ability of payphone service providers to enter or exit the market, and establishes regulations designed to ensure the accessibility of payphone service to individuals with disabilities. With respect to payphone compensation, the subpart provides for contracts between providers, but sets a default compensation rate should the parties not reach an agreement. The subpart also requires carriers to establish arrangements and track the data necessary for the calculation, verification, billing, and collection of payphone compensation.

Purpose

Subpart M is designed to implement section 276 of the Act and help ensure that payphone providers receive fair compensation for completed intrastate and interstate calls that use their payphones, to encourage competition among payphone service providers, and to promote the widespread deployment of payphone services.

Analysis

Status of Competition

Incumbent local exchange carriers have significant market power in the provision of payphone service. Independent payphone providers have captured approximately fifteen percent of the payphone market.

Advantages

The payphone regulations act to restrain the market power of incumbent LECs and ensure that payphone providers are fairly compensated through a default rate.

Disadvantages

By establishing a default payphone compensation rate, the payphone rules may discourage negotiated, market-based compensation arrangements because neither side has the incentive to disadvantage itself in relation to the default rate.

Recent Efforts

The U.S. Court of Appeals for the D.C. Circuit issued a decision on June 16, 2000 upholding the Commission's decision to establish a default compensation rate of $.24 per call for payphone calls.[247]

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246 *See* 47 U.S.C. § 276.

247 *American Public Communications Council v. FCC*, 215 F.3d 51 (D.C. Cir. 2000).

Recommendation

The staff recommends retention of the payphone rules, but recommends continued monitoring to assess future competitive developments in the payphone market. The staff recommends deletion of section 64.1320, which applies only to activities prior to January 1, 1999.

PART 64, SUBPART N – EXPANDED INTERCONNECTION

Description

Subpart N provides that Class A local exchange carriers, which do not participate in the National Exchange Carrier Association tariff, must provide expanded interconnection.[248] Subpart N requires that these incumbent LECs allow interconnection with their networks through physical or virtual collocation for the provision of interstate special access and switched transport services. Any interested party may take expanded interconnection. Subpart N was adopted pursuant to the Commission's authority under Sections 1, 4, and 201 through 205 of the Communications Act, as amended.[249]

Purpose

Subpart N is designed to increase competition in the provision of interstate services by removing barriers to the competitive provision of special access and switched transport services.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

Subpart N fosters competition in the provision of special access and switched transport services. In particular, subpart N makes collocation and interconnection available to a broader group of interested parties than section 251 of the Communications Act and Part 51 of the Commission's rules. Any interested party, including end users such as large businesses and universities, for example, can take advantage of expanded interconnection under subpart N, while interconnection and collocation under section 251 of the Communications Act and Part 51 of the Commission's rules are limited to telecommunications carriers.

Disadvantages

Subpart N imposes some costs on incumbent LECs, which are passed on to requesting parties.

Recent Efforts

No recent action.

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248 Bell South, SBC, USWest and Verizon are subject to this requirement.

249 47 U.S.C. §§ 151, 154, and 201-05.

Recommendation

The staff recommends that the Commission retain subpart N because it covers more interested parties than section 251 of the Act and Part 51 of the rules, and serves to promote competition.

PART 64, SUBPART O – INTERSTATE PAY-PER-CALL AND OTHER INFORMATION SERVICES

Description

Subpart O contains provisions concerning pay-per-call and certain other information services. Subpart O requires that common carriers assigning telephone numbers to providers of interstate pay-per-call services require that the provider comply with this subpart as well as certain other laws and regulations. Subpart O restricts the provision of pay-per-call services over 800 and other "toll free" numbers, and effectively bars the provision of interstate pay-per-call services on a collect basis. Subpart O provides for the assignment of the 900 service access code to pay-per-call services. It requires that local exchange carriers offer subscribers the option of blocking access to 900 numbers from their telephones. Subpart O also bars the disconnection or interruption of local exchange or long distance service for the non-payment of charges for interstate pay-per-call and certain information services. In addition, subpart O establishes conditions for common carrier provision of billing and collection for pay-per-call services. The requirements in subpart O are based on the Commission's authority under Sections 1, 4, and 201through 205 of the Communications Act, as amended.[250]

Purpose

Subpart O is designed to protect consumers from the fraudulent or unscrupulous provision of pay-per-call services.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers

Advantages

Subpart O protects consumers from the fraudulent or unscrupulous provision of pay-per-call services.

Disadvantages

Compliance with the requirements of subpart O increases the cost of providing pay-per-call services.

Recent Efforts

There have not been any recent actions.

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[250] 47 U.S.C. §§ 151, 154, and 201-05.

Recommendation

The staff does not recommend changes to subpart O as part of the current biennial review.

PART 64, SUBPART P – CALLING PARTY TELEPHONE NUMBER; PRIVACY (ALSO KNOWN AS "CALLER ID")

Description

Subpart P contains the Commission's rules concerning Calling Party Number (CPN) services, including "Caller ID," which depend on capabilities that use out-of-band signaling techniques, such as Signaling System Seven (SS7). Subpart P provides that common carriers using SS7 must, subject to certain exceptions, transmit the CPN associated with interstate calls to interconnecting carriers without additional charge. Originating carriers using SS7 must recognize *67 as a caller's request for privacy when dialed as the first three digits of an interstate call. Carriers providing line blocking services are required to recognize *82 as a caller's request that privacy not be provided and that the CPN be passed on an interstate call. Subpart P restricts the use of telephone subscriber information provided as part of Automatic Number Identification or Charge Number services. Carriers are also required to notify customers of their *67 and *82 capabilities. The requirements in subpart P are based on the Commission's authority under sections 1, 4, and 201 through 205 of the Communications Act, as amended.[251]

Purpose

Subpart P provides a clear and consistent regulatory framework for deployment of CPN-based services which protects subscriber privacy while fostering the development of new and innovative services.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

Subpart P protects the privacy interests of telephone users, and provides for consumer education concerning CPN-based interstate services.

Disadvantages

Compliance with subpart P imposes some costs on carriers.

Recent Efforts

No recent actions.

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[251] 47 U.S.C. §§ 151, 154, and 201-05.

Recommendation

The staff does not recommend that the Commission modify subpart P as part of this biennial review.

PART 64, SUBPART Q – IMPLEMENTATION OF SECTION 273(D)(5) OF THE COMMUNICATIONS ACT: DISPUTE RESOLUTION REGARDING EQUIPMENT STANDARDS

Description

Section 273(d) of the Communications Act, as amended, establishes procedures to be followed by non-accredited standards organizations when setting industry-wide standards or generic requirements for telecommunications equipment or customer premises equipment (CPE). Section 273(d)(5) of the Act directs the Commission to prescribe a dispute resolution process to be used when all parties involved in such standards setting cannot agree on a dispute resolution process. Subpart Q establishes a default dispute resolution process in response to section 273(d)(5). It provides for resolution of technical disputes by a three-member panel, whose recommendation can be overturned if three-fourths of the funding parties vote to do so.

Purpose

Subpart Q is designed to implement section 273(d) and ensure the fair, prompt and economical resolution of disputes that arise in the context of private sector development of technical standards for telecommunications equipment and CPE.

Analysis

Status of Competition

The market for CPE is competitive, with vibrant competition among a wide variety of CPE manufacturers.

Advantages

The default dispute resolution process prescribed in subpart Q provides for the fair, prompt and economical resolution of disputes when the parties are unable to agree on a mutually satisfactory process.

Disadvantages

Since this dispute resolution process is only used when the parties cannot agree on another approach, it does not appear to have any significant disadvantages.

Recent Efforts

No recent action.

Recommendation

The staff recommends that the Commission retain subpart Q.

PART 64, SUBPART R – GEOGRAPHIC RATE AVERAGING AND RATE INTEGRATION

Description

Section 254(g) of the Communications Act, as amended,[252] requires interexchange rate averaging and rate integration. The rate averaging provisions require interexchange carriers to charge customers in rural and high cost areas no more than they charge urban customers. The rate integration provisions require carriers to charge customers in one state the same rates for interexchange service charged to customers in any other state. Subpart R implements this requirement.

Purpose

Subpart R is designed to implement section 254(g) of the Act and ensure that all customers, regardless of where they live, have access to interexchange services at comparable rates.

Analysis

Status of Competition

The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

The rate averaging and rate integration requirements help ensure that all domestic interexchange toll service customers, regardless of where they live, share in the benefits of rate reductions and new technologies that result from the competitive nature of the interexchange market.

Disadvantages

By requiring carriers to average their rates across all of their service areas, the rate averaging and rate integration provisions in the statute create implicit subsidies running from low-cost areas to high-cost areas. This has the potential to distort the market by discouraging carriers from serving high cost areas. It can also make it difficult for national interexchange carriers serving both high and low cost areas to compete effectively with carriers that provide targeted interexchange services in low-cost areas.

Recent Efforts

The U.S. Court of Appeals for the D.C. Circuit recently affirmed the Commission's ruling that an interexchange carrier and all of its affiliates must charge the same integrated long distance rates. The court, however, vacated the Commission's decision that Section 254(g) unambiguously applies rate integration to CMRS carriers and remanded to the Commission the question of whether rate integration should apply to these carriers.[253]

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252 *See* 47 U.S.C. § 254(g).

253 *GTE Service Corp. v. FCC*, No. 97-1538 (D.C. Cir., July 14, 2000).

Recommendation

The staff recommends review of the applicability of rate integration to CMRS carriers pursuant to the court remand, but does not recommend that this be treated as a part of the 2000 Biennial Review. The staff recommends retention of the other rate integration and rate averaging rules that implement the statutory mandate of the 1996 Act. The staff recommends that the Commission monitor the potential effect of these provisions on the development of competition in the interexchange market.

PART 64, SUBPART S – NONDOMINANT INTEREXCHANGE CARRIER CERTIFICATIONS REGARDING GEOGRAPHIC RATE AVERAGING AND RATE INTEGRATION REQUIREMENTS

Description

Section 254(g) of the Communications Act, as amended, requires interexchange carrier rate averaging and rate integration.[254] Subpart S implements this requirement by requiring that nondominant carriers that provide detariffed interstate domestic interexchange service file an annual certification with the Commission (signed by an officer under oath), stating that they comply with the rate averaging and rate integration requirements in section 254(g).

Purpose

Subpart S is intended to implement section 254(g) and insure compliance with the statutory requirement that all customers, regardless of where they live, have access to interexchange services at comparable rates.

Analysis

Status of Competition

The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

The rate averaging and rate integration certification requirements facilitate enforcement of the statutory requirement in section 254(g) of the Act that all domestic interexchange toll service customers, regardless of where they live, share in the benefits of rate reductions and new technologies that result from the competitive nature of the interexchange market.

Disadvantages

Requiring that nondominant interexchange carriers file annual certifications may impose some administrative costs on these carriers.

Recent Efforts

There have been no recent actions.

Recommendation

The staff recommends retention of subpart S.

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[254] 47 U.S.C. § 254(g).

PART 64, SUBPART T – SEPARATE AFFILIATE REQUIREMENTS FOR INCUMBENT INDEPENDENT LOCAL EXCHANGE CARRIERS THAT PROVIDE IN-REGION, INTERSTATE DOMESTIC INTEREXCHANGE SERVICES OR IN-REGION INTERNATIONAL INTEREXCHANGE SERVICES

Description

Subpart T establishes separate subsidiary requirements applicable to the provision of in-region, interstate domestic, interexchange services and in-region international interexchange services by incumbent independent local exchange carriers. Subpart T generally requires that the separate affiliate: (1) maintain separate books of account, although these books of account need not comply with Part 32 requirements; (2) not own transmission or switching facilities jointly with its affiliated exchange company, although the separate affiliate may share personnel or other assets or resources with an affiliated exchange company; (3) take, pursuant to tariff, any services for which its affiliated exchange carrier is required to file a tariff, although the separate affiliate may also take unbundled network elements and services for resale pursuant to the terms of pre-existing negotiated agreements approved under section 252 of the Act; and (4) be a separate legal entity from the affiliated exchange company, although the separate affiliate may share personnel, office space and marketing with the affiliated exchange companies. Subpart T was adopted pursuant to sections 1, 2, 4, 201, 202, 220, 251, 271, 272 and 303(r) of the Communications Act, as amended.[255]

Purpose

Subpart T is designed to prevent incumbent independent local exchange carriers from exercising market power in the provision of in-region long distance services.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

By requiring a separate affiliate for the provision of in-region long distance service by independent incumbent local exchange carriers, subpart T helps to prevent these carriers from exercising market power in the provision of in-region long distance services.

Disadvantages

Subpart T may increase independent incumbent local exchange carriers' costs of providing in-region, interstate, interexchange services. Additionally, section 64.1903(c) is no longer applicable since it addresses exclusively the time period prior to August 30, 1999.

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[255] 47 U.S.C. §§ 151, 152, 154, 201, 202, 220, 251, 271, 272, and 303(r).

Recent Efforts

In August 1999, the Commission revised subpart T to allow independent LECs providing in-region long distance services solely on a resale basis to do so through a separate corporate division rather than through a separate legal entity.[256]

Recommendation

The staff recommends that the Commission modify subpart T to provide for triennial review of the requirement that independent incumbent LECs provide interexchange service through a separate affiliate. The staff also recommends that the Commission delete section 64.1903(c), since it pertains exclusively to the time period prior to August 31, 1999.

[256] *Regulatory Treatment of LEC Provision of Interexchange Services, Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Market Place, Second Order on Reconsideration*, 14 FCC Rcd 10771 (1999).

PART 64, SUBPART U – CUSTOMER PROPRIETARY NETWORK INFORMATION

Description

Section 222 of the Communications Act, as amended,[257] restricts carrier use of customer proprietary network information (CPNI), which, among other things, identifies to whom, where, and when a customer places a call, and identifies the types of service offerings to which the customer subscribes and the extent to which the service is used. The Commission adopted CPNI rules pursuant to section 222, but the order adopting those rules was overturned on appeal, as discussed in more detail below.[258] Section 222 remains in effect, however, and the Commission has authority to enforce the CPNI protections in that section.

Purpose

The Commission adopted the CPNI rules in order to implement the provisions of section 222 and protect consumer privacy and foster competition.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is fully competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

The CPNI rules protect consumer privacy and foster competition.

Disadvantages

The CPNI rules adopted by the Commission impose some costs on carriers. The 10th Circuit Court of Appeals decision concerning the Commission's CPNI rules is discussed below.

Recent Efforts

The 10th Circuit Court of Appeals found that the Commission's interpretation of the customer approval requirement for the use of CPNI in certain circumstances violated the First Amendment. Although the court did not discuss other aspects of the Commission's rules, its opinion concluded by vacating the Commission order adopting the CPNI rules. The court did not address the constitutionality of section 222, which remains in effect and continues to protect customer CPNI. The Commission is in the process of addressing the court's ruling.

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257 47 U.S.C. § 222.

258 *US West v. FCC*, 182 F.3d 1224 (10th Cir. 1999), *cert. denied*, 120 S Ct. 2215 (June 5, 2000) (No. 99-1427).

Recommendation

The staff does not recommend that the Commission take action concerning subpart U as part of the 2000 Biennial Review.

PART 64, SUBPART V – TELECOMMUNICATIONS CARRIER SYSTEMS SECURITY AND INTEGRITY PURSUANT TO THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA)

Description

Section 105 of CALEA,[259] requires that telecommunications carriers establish safeguards to ensure that interception of communications or access to call-identifying information can be activated only in accordance with a court order or other lawful authorization, and with the affirmative intervention of an officer or employee. Subpart V implements this CALEA requirement by mandating that carriers adopt policies and procedures for supervision and control of their employees and officers in this regard, and by requiring that carriers maintain secure records of each interception of communications or access to call-identifying information. Each telecommunication carrier is required to submit its policies and procedures to the Commission for review.

Purpose

Subpart V is intended to implement section 105 of CALEA and help protect subscribers' privacy rights by ensuring that any interception is in accordance with legal authorization.

Analysis

Status of Competition

Not relevant.

Advantages

Subpart V helps protect subscriber privacy.

Disadvantages

Compliance with these requirements increases carrier costs.

Recent Efforts

Subpart V was adopted in September 1999.[260]

Recommendation

The staff does not recommend that the Commission modify subpart V as part of its 2000 Biennial Review.

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[259] 47 U.S.C. § 1004.

[260] *Communications Assistance for Law Enforcement Act*, *Report and Order*, 14 FCC Rcd 4151 (1999).

PART 64, SUBPART W – REQUIRED NEW CAPABILITIES PURSUANT TO THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA)

Description

Subpart W establishes the technical requirements and standards that telecommunications carriers must satisfy to ensure that, when properly authorized, law enforcement officials have access to communications and call-identifying information, as required by section 103 of CALEA.[261] Subpart W parallels requirements and standards for wireless telecommunications carriers set out in Part 22, subpart J and Part 24, subpart J.

Purpose

Subpart W is intended to implement section 103 of CALEA and assist in enforcement of criminal laws, and to clarify what telecommunications carriers must do in order to satisfy the requirements of section 103(a) of CALEA.[262]

Analysis

Status of Competition

Not relevant.

Advantages

Subpart W facilitates enforcement of criminal law and clarifies what carriers must do in order to comply with CALEA.

Disadvantages

Compliance with these requirements increases carriers' costs.

Recent Efforts

On August 15, 2000, the D.C. Circuit affirmed in part and vacated and remanded in part the requirements contained in subpart W.[263]

Recommendation

The staff recommends that the Commission reassess its subpart W rules pursuant to the D.C. Circuit's remand.

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[261] 47 U.S.C. § 1002.

[262] *See Communications Assistance for Law Enforcement Act*, CC Docket No. 97-213, *Third Report and Order*, 14 FCC Rcd 16794 (1999).

[263] *Aff'd in part and rev'd in part, United States Telecom Ass'n v. FCC*, Nos. 99-1442 *et al*. (D.C. Cir. Aug. 15, 2000).

PART 64, SUBPART X – SUBSCRIBER LIST INFORMATION

Description

Section 222(e) of the Communications Act[264] requires carriers providing telephone exchange service to provide subscriber list information to requesting directory publishers "on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions." Subpart X implements this statutory provision, addressing third party rights to subscriber list information, which includes listed subscribers' names, addresses and telephone numbers, as well as headings under which businesses are listed in the yellow pages.

Purpose

Subpart X is intended to implement section 222(e) of the Act and encourage the development of competition in directory publishing by ensuring that competing directory publishers can obtain subscriber list information from local exchange carriers.

Analysis

Status of Competition

The market for directory publishing has been dominated by incumbent LEC publishing operations, but is becoming increasingly competitive. Much of this increased competition is due to section 222 and the Commission's implementing rules in subpart X.

Advantages

Subpart X fosters competition in directory publishing, and prevents incumbent local exchange carriers from using control of their subscriber information lists to undermine competition in the directory publishing business.

Disadvantages

These requirements may place some administrative burdens on local exchange carriers.

Recent Efforts

The Commission adopted the subpart X rules on August 23, 1999.[265]

Recommendation

The staff does not recommend that the Commission modify subpart X at this time.

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[264] 47 U.S.C. § 222(e).

[265] *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, *Third Report and Order*, FCC 99-227 (rel. Sept. 9, 1999).

PART 64, SUBPART Y – TRUTH-IN-BILLING REQUIREMENTS FOR COMMON CARRIERS

Description

The Commission adopted the rules in subpart Y pursuant to its authority under sections 201(b) and 258 of the Communications Act of 1934, as amended.[266] Subpart Y contains binding truth-in-billing guidelines that apply to carriers selling telecommunications services. Subpart Y requires carriers to provide customers with necessary information about the services and charges that are shown on the customer's bill in a user-friendly format. Specifically, subpart Y requires carriers to separate charges on the bill by provider, to describe clearly the services involved, to display clearly the name of the service provider in association with its charges, to display a toll-free number (or, in certain cases, a website) for consumer inquiries, to identify those charges for which failure to pay will not result in disconnection of the customer's basic local service, and to highlight new service providers.

Purpose

Subpart Y is designed to implement sections 201(b) and 258 of the Act and make telephone bills easier for consumers to understand, so that customers can make informed choices among carriers and services in the increasingly competitive telecommunications market. Subpart Y is also intended to make it easier for consumers to identify and report fraud, such as slamming (unauthorized change of consumer's telecommunications carrier) and cramming (placement of unauthorized, misleading, or deceptive charges on a consumer's telephone bill).

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas. The market for long distance service is competitive, although there is greater competition for high volume customers than for low volume customers.

Advantages

Subpart Y makes telephone bills easier for customers to understand and ensures that consumers have the information necessary to make informed choices among carriers and services. These rules also make it easier for consumers to detect and report fraud in the provision of telecommunications services such as slamming and cramming.

Disadvantages

These requirements may increase carrier costs somewhat.

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[266] 47 U.S.C. §§ 201(b) and 258. These rules were inadvertently placed in subpart U in the 1999 Code of Federal Regulations. This error was subsequently corrected and the rules were placed in subpart Y. 65 Fed. Reg. 36637 (June 9, 2000).

Recent Efforts

Some of the truth-in-billing rules contained in subpart Y took effect in November 1999, and several more took effect in April 2000.

In March 2000, the Commission modified the truth in billing rules slightly, specifying that the requirement that telephone bills highlight new service providers does not apply to services billed solely on a per-transaction basis, and making other minor modifications.[267] These changes became effective on August 28, 2000.

Recommendation

The staff does not recommend further changes to subpart Y as part of the 2000 Biennial Review.

[267] *Truth-in-Billing and Billing Format, Order on Reconsideration*, CC Docket No. 98-170, FCC 00-111 (rel. Mar. 29, 2000); *Errata*, DA 00-745 (rel. Mar. 31, 2000).

PART 65 – INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

Description

Section 201 of the Communications Act, as amended, requires that rates for common carrier communications services be just and reasonable.[268] Part 65 sets forth procedures and methodologies used by the Commission to prescribe an authorized interstate rate-of-return for the exchange access services of incumbent local exchange carriers subject to rate-of-return regulation. Price cap incumbent local exchange carriers also use the Commission prescribed rate-of-return for certain limited purposes. The Part 65 rules describe the methodologies to be used in calculating the cost of equity, the cost of debt, the weighted average cost of capital (both equity and debt), the interstate ratebase, and the carriers' interstate rate-of-return. These rules also require the filing of certain rate-of-return reports.

Part 65 is organized into seven lettered subparts.

A – General
B – Procedures
C – Exchange Carriers
D – Interexchange Carriers
E – Rate-of-Return Reports
F – Maximum Allowable Rates of Return
G – Rate Base

Purpose

The Part 65 rules are designed to protect consumers from excessive rates by prescribing an authorized interstate rate of return used to set local exchange access rates for incumbent local exchange carriers subject to rate-of-return regulation. (End users pay the subscriber line charge element of interstate access charges directly. Other interstate access charges are paid by the interexchange carriers and reflected in their interstate long distance rates.)

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers in rural areas.

Advantages

The Part 65 rules protect consumers from excessive interstate access charges by incumbent local exchange carriers subject to rate-of-return regulation. The authorized interstate rate of return is also used by

[268] 47 U.S.C. § 201 (b).

incumbent local exchange carriers for certain purposes, for example, calculating payments to and disbursements from the universal service fund and in the low end adjustment formula.

Disadvantages

The Part 65 rules impose some paperwork burdens on carriers.

Recent Efforts

In 1995, the Commission substantially reformed the Part 65 rules. The major changes made by the 1995 order were the elimination of the biennial represcription schedule, and simplification of the represcription process. The Commission replaced the existing rule, which called for the initiation of rate return represcription proceedings every two years, with a semiautomatic trigger activated by changes in capital costs.[269]

In October 1998, the Common Carrier Bureau initiated a proceeding to represcribe the rate of return.[270] This proceeding has not yet been completed.

Recommendation

The staff does not recommend changes in the Part 65 rules at this time.

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[269] *Amendment of Parts 65 and 69 of the Commission's Rules to Reform the Interstate Rate of Return Prescription and Enforcement Process, Report and Order*, 10 FCC Rcd 6788 (1995).

[270] *Prescribing the Authorized Unitary Rate of Return for Interstate Services of Local Exchange Carriers, Notice Initiating a Prescription Proceeding and Notice of Proposed Rulemaking*, 13 FCC Rcd 20561 (1998).

PART 68 – CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

Description

Part 68 was established in 1974 as the result of a court decision ruling that the Bell Operating Companies could not bar direct connection of customer premises equipment (CPE) (such as telephones, fax machines, modems, etc.) to the public switched telephone network (PSTN), so long as the CPE would not cause harm to the PSTN.[271] Part 68 requires that CPE be tested to show that it will not harm the PSTN or carrier personnel, and then registered with the Commission. Carriers are obligated to permit the free connection of registered CPE to the PSTN, but they can require disconnection of unregistered CPE or of CPE that causes harm to the PSTN without recourse to litigation. Part 68 also establishes the right of customers to use competitively provided inside wiring.

In addition, Part 68 implements a statutory requirement for telephone equipment compatibility with hearing aids,[272] and contains two consumer protection provisions mandated by statute: a requirement that all fax transmissions include source labeling,[273] and a requirement that CPE support equal access to providers of operator services.[274]

Part 68 is organized into six lettered subparts:

A – General
B – Conditions on Use of Terminal Equipment
C – Registration Procedures
D – Conditions for Registration
E – Complaint Procedures
F – Connectors

Purpose

The Part 68 rules are designed to foster competition in the provision of CPE and inside wiring by permitting the connection of competitively provided CPE and inside wiring to the PSTN. Part 68 is also intended to ensure that the connection of CPE and inside wiring does not harm the PSTN or injure personnel. In addition, Part 68 is designed to ensure the compatibility of hearing aids and telephone receivers so that persons with hearing aids will be able to use virtually all telephones.

Analysis

Status of Competition

The market for CPE and the market for the installation of inside wiring in single family residences are fully competitive.

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271 *Hush-A-Phone v. United States*, 238 F.2d 266 (D.C. Cir. 1956).

272 Hearing Aid Compatibility Act of 1988, 47 U.S.C. § 610.

273 47 U.S.C. § 227(d)(2).

274 47 U.S.C. § 227(d)(1).

Advantages

Part 68 benefits consumers by fostering competition in the provision of CPE and inside wiring. The competition engendered by Part 68 has greatly increased innovation in CPE and reduced prices. Part 68 also benefits consumers and the industry by preventing harm to the PSTN and carrier personnel. In addition, Part 68 benefits people with hearing disabilities and those who communicate with these people by requiring that telephone receivers be compatible with hearing aids.

Disadvantages

The present Part 68 requirements for CPE registration impose additional costs on manufacturers and may delay customer access to new CPE. The present Part 68 registration program also uses Commission resources that might otherwise be available for other priorities.

Recent Efforts

The Commission is taking steps to streamline the Part 68 CPE registration process. On June 2, 2000, the Commission implemented measures allowing private entities to register CPE, ending the policy of having the Commission perform this function on an exclusive basis.[275] A Notice of Proposed Rulemaking, released May 22, 2000 in CC Docket No. 99-216, proposes that the Commission cease performing all registration functions other than consideration of appeals, thus entirely privatizing CPE registration.[276] In the May 22 Notice, the Commission also proposes to privatize the development of technical criteria that CPE must meet in order to be registered.

Recommendation

The staff recommends continuation of the basic Part 68 requirement that LECs must allow the connection of Part 68-compliant CPE and inside wiring to the PSTN. The staff also recommends continuing the requirements for hearing aid compatibility and the other consumer protection requirements in Part 68. In addition, the staff recommends continuation of the Commission's ongoing efforts in CC Docket No. 99-216 to streamline and privatize the development of technical standards and the CPE registration process.

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[275] *Office of Engineering and Technology and Common Carrier Bureau Announce the Designation of Telecommunications Certification Bodies (TCBs) to Approve Radiofrequency and Telephone Terminal Equipment, Public Notice*, DA 00-1223 (rel. June 2, 2000); *see also, 1998 Biennial Regulatory Review – Amendment of Parts 2, 25, and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment, Modify the Equipment Authorization Process for Telephone Terminal Equipment, Implement Mutual Recognition Agreements and Begin Implementation of the Global Mobile Personal Communications by Satellite (GMPCS) Arrangements, Report and Order*, 13 FCC Rcd 24687 (1998).

[276] *2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations*, CC Docket No. 99-216, *Notice of Proposed Rulemaking*, FCC 00-171 (rel. May 22, 2000).

PART 69 – ACCESS CHARGES

Description

Sections 201 and 202 of the Communications Act of 1934, as amended, require that rates, terms and conditions for telecommunications services be just and reasonable,[277] and prohibit unjust or unreasonable discrimination.[278] Part 69 implements these sections of the Act by establishing rules that perform the following major functions. First, the Part 69 rules establish the rate structure for access charges to be paid by interexchange carriers for the origination and termination of long distance calls, as well as the access charges to be paid directly by end users.[279] These rate structure rules establish the access charge rate elements as well as the nature of the charges, such as whether they are assessed on a per minute or a flat-rate basis. Second, the Part 69 rules govern how rate-of-return LECs calculate their access charge rates. Third, the Part 69 rules, in conjunction with the Part 61 price cap rules, establish the degree of pricing flexibility available to price-cap LECs. Finally, Part 69 provides for the establishment of the National Exchange Carrier Association (NECA), which files tariffs on behalf of many of the smaller, rate-of-return LECs.

Part 69 is organized into eight lettered subparts:

A – General
B – Computation of Charges
C – Computation of Charges for Price Cap Local Exchange Carriers
D – Apportionment of Net Investment
E – Apportionment of Expenses
F – Segregation of Common Line Element Revenue Requirement
G – Exchange Carrier Association
H – Pricing Flexibility

Purpose

The Part 69 rules are designed to implement the provisions of sections 201 and 202 of the Act and protect consumers by preventing the exercise of market power by incumbent LECs and ensuring that rates are just, reasonable, and not unjustly or unreasonably discriminatory. The requirement for a certain minimum set of access charge rate elements and the rate calculation rules for rate-of-return carriers also greatly reduce the resources required in the tariff review process.

Analysis

Status of Competition

Competition in the local exchange and exchange access markets is growing, although competitive local exchange carriers still serve only a small percentage of local exchange lines. Competition for business customers in metropolitan areas has, in general, developed more rapidly than competition for residential customers or customers in rural areas.

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277 47 U.S.C. § 201.

278 47 U.S.C. § 202.

279 Local exchange carriers subject to price cap regulation must offer a basic set of access rate elements, but are free to offer additional access services.

Advantages

The Part 69 rules protect customers from the exercise of market power by incumbent LECs. The requirement for a minimum set of access charge rate elements and the pricing rules for both rate-of return and price-cap LECs greatly reduce the Commission resources required to ensure carrier compliance with sections 201 and 202 of the Act. These requirements also greatly facilitate analysis of access charges by other interested parties. The creation of NECA facilitates the filing of access charge tariffs by smaller rate-of-return LECs and reduces the administrative costs involved

Disadvantages

The requirement that the LECs offer a minimum set of access charge rate elements limits their flexibility and could over time reduce their ability to respond appropriately to competition. The pricing rules for both price-cap and rate-of-return LECs could also undermine their ability to respond to competition if not adjusted over time. The pooling of revenues and costs under the NECA tariffs reduces the incentives of individual carriers to improve efficiency.

Recent Efforts

The Commission recently addressed the access charge rules applicable to price cap LECs in the CALLS proceeding.[280] The Commission has also established rules permitting price cap LECs greater pricing flexibility as they achieve specified competitive milestones.[281] In addition, the Commission is seeking comment on issues relating to further pricing flexibility. The Commission has also initiated a rulemaking proceeding addressing issues relating to access charge reform for rate-of-return LECs.[282]

Recommendation

In light of recent Commission decisions concerning Part 69 discussed above, the staff does not recommend any new initiatives relating to Part 69 in the context of this biennial regulatory review. The ongoing proceedings addressing issues of access charge reform provide an appropriate means of addressing competitive developments in the exchange access market. We also note that the inter-carrier compensation proceeding that the staff recommends in the text of this report could result in revisions to Part 69 that would address anticipated competitive developments.

The staff recommends deleting a number of provisions that apply only to past time periods, or are otherwise no longer in effect, including sections 69.116, 69.117, 69.126, 69.127, and 69.612.

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280 *Access Charge Reform*, CC Docket No. 96-262, FCC 00-193, (rel. May 31, 2000).

281 *Access Charge Reform*, 14 FCC Rcd 14221 (1999).

282 *Access Charge Reform for Incumbent LECs Subject to Rate-of-Return Regulation*, 13 FCC Rcd 14236 (1998).

PART 73, – RADIO BROADCAST SERVICES, SECTION 73.3555 – THE BROADCAST OWNERSHIP RULES

Description

Statutory authority for section 73.3555 of the Commission's rules is found in sections 308, 309 and 310 of the Communications Act of 1934, as amended. Section 308 requires the filing of a written application for licenses and construction permits (except in certain narrow enumerated cases) and states that such applications shall set forth such facts as the Commission may prescribe, including the ownership and location of the proposed station. Section 309 requires the Commission, except in the case of certain designated applications, to determine whether the grant of an application would serve the public interest, and to grant the application upon such a finding. Section 310(d) specifies that no construction permit or license shall be transferred without first filing an application with the Commission and without the Commission's finding that the public interest would be served thereby. Section 73.3555 contains the rules limiting the degree of common ownership of radio and television stations. It also contains attribution rules that specify when interests in mass media facilities will be considered cognizable for purposes of applying the mass media ownership rules.

Purpose

The broadcast ownership rules are intended to foster diversity and competition in broadcasting.

Analysis

Status of Competition

For an assessment of competition in broadcasting, see section V of the Report.

Advantages

The Commission is precluded from regulating the content of programming by section 326 of the Communications Act of 1934, as amended, and by the First Amendment. The ownership rules are a structural method of ensuring diversity of viewpoints in broadcasting. The rules are also intended to foster competition in broadcasting.

Disadvantages

Broadcasters allege that the rules restrict mass media entities in competing with other content providers that are not subject to ownership rules and restrict scale efficiencies.

Recent Efforts

Section V of the Report details the Commission's recent reviews of the ownership rules, including that contained in the recently released 1998 Biennial Regulatory Review Report.

Recommendation

Section V of the Report details a recommendation with respect to each of the ownership rules contained in section 73.3555.

PART 80 – STATIONS IN THE MARITIME SERVICES, SUBPARTS J (PUBLIC COAST STATIONS) AND Y (COMPETITIVE BIDDING PROCEDURES)

Description

Part 80[283] contains licensing, technical, and operational rules for radio stations in the maritime services, which provide for the distress, operational, and personal communications needs of vessels at sea and on inland waterways.[284] Maritime frequencies are allocated internationally by geographic region and type of communication in order to facilitate interoperable radio communications among vessels of all nations and stations on land worldwide. Land stations in the maritime services are the links between vessels at sea and activities on shore. They are spread throughout the coastal and inland areas of the United States to carry radio signals and messages to and from ships.

For purposes of the Biennial Regulatory Review, the analysis of Part 80 in this report focuses on the rules affecting public coast stations (subparts J and Y), which are unique in the Maritime Services in that they are used for commercial applications, are licensed on a geographic exclusive-use basis, and are subject to licensing by the Commission's competitive bidding procedures.

Public coast stations are commercial mobile radio service (CMRS) providers that allow ships to send and receive messages and to interconnect with the public switched telephone network.[285] VHF band (156-162 MHz) public coast stations (VPC) provide short-range communications for vessels not more than 30 nautical miles from shore. High seas band (2-27.5 MHz) public coast stations serve vessels far from shore. Automated Maritime Telecommunications System (AMTS) stations are a special type of public coast station operating in the 216-220 MHz band. AMTS stations are licensed to provide coverage over an entire inland waterway or a substantial portion of an ocean coastline.

Public coast stations are common carriers, and thus charge a fee for providing voice, telex, fax, or data transmission services. Public coast stations also provide a vital public service because they can reach well beyond the limits of terrestrial radio systems and are required by statute to relay distress messages free of charge.

Purpose

The primary purpose of the Maritime Services is to provide for the safety of life and property at sea.[286] The specific purpose of the Part 80 public coast station rules is to establish the mechanism for allocating licenses, to ensure spectrum use that provides public coast licensees with maximum flexibility while concurrently respecting the unique nature of maritime spectrum, and to prevent interference. Public coast stations provide commercial operational and general purpose communications between ship and shore and between ships that are out of each others' radio range.

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283 47 C.F.R. Part 80.

284 *See Amendment of the Commission's Rules Concerning Maritime Communications, Second Report and Order and Second Further Notice of Proposed Rulemaking*, 12 FCC Rcd 16949 (1997) (*Second Further Notice*).

285 *Amendment of the Commission's Rules Concerning Maritime Communications, Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853 (1998) (*Maritime Third Report and Order*).

286 *Id.*, 13 FCC Rcd at 19856 ¶ 2.

Analysis

Status of Competition

While competition in the CMRS industry as a whole continues to benefit from the effects of increased competition, as evidenced by lower prices to consumers and increased diversity of service offerings, competition is generally less robust in the public coast services, due in part to the unique nature of maritime communications and the predominant safety-of-life communications responsibilities required of licensees. In addition, other CMRS services – such as cellular and PCS – can serve as substitutes for commercial ship-to-shore communications, particularly for vessels operating near the coast and on inland waterways. Large-scale public coast operators – particularly MariTel – are becoming predominant in VPC as many small and independent licensees leave the business. Competition is stronger in AMTS than on the high seas band.

Advantages

The public coast station rules promote the safety of life and property at sea, while concurrently providing public coast licensees with the opportunity to compete as CMRS providers. For example, the rules provide for licensing of VPC on a geographic basis, allow partitioning and disaggregation, and permit VPC licensees to utilize capacity not needed for maritime service to provide other types of services.[287] These characteristics are consistent with the regulatory flexibility the Commission has provided in other competitive services.

The subpart Y competitive bidding rules establish procedures for the efficient licensing of spectrum. Use of auction procedures allows for substantially faster licensing than alternative licensing methods such as lotteries and comparative hearings, and is more likely to result in award of licenses to those entities that value the spectrum the most and will use it most efficiently. Auction rules also enable the Commission to recover a portion of the value of the spectrum for the benefit of the public.

Disadvantages

Because of the unique characteristics of the maritime services, public coast station licensees are subject to responsibilities that other CMRS providers do not face. The international allocation of maritime frequencies and the associated statutes, treaties, and agreements limit the flexibility of use of maritime frequencies. Because two frequency blocks are allocated to AMTS, competition is limited to two competitors at any location and disaggregation is not currently available in AMTS. There are additional administrative burdens associated with the competitive bidding of public coast station licenses, including filing and reporting requirements, as well as the cost of maintaining staff and electronic resources to participate in auctions. Nevertheless, the delays associated with this process are significantly less than those historically associated with licensing by lottery or hearing.

Recent Efforts

In the 1998 *Maritime Third Report and Order* in the Maritime Services proceeding, the Commission substantially revised the public coast service rules to provide opportunities for the development of competitive new services, streamline licensing procedures, promote technological innovation, and enhance

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[287] *See Second Further Notice*, 12 FCC Rcd at 16965.

regulatory symmetry between maritime CMRS providers and other CMRS providers.[288] For example, VPS and AMTS stations may now provide service to units on land, provided that priority is given to marine originating communications. In addition, in December 1998, the Commission held its first auction of spectrum in the public coast service, which resulted in the award of 26 VHF public coast station licenses.[289]

Recommendation

The Maritime Services proceeding has established the framework for increased competition within the public coast service, and between public coast stations and other CMRS providers. Moreover, licensees that acquired their licenses in the 1998 auction are still engaged in buildout of their networks. For these reasons, the staff does not believe that there is a need to revise the existing maritime rules in order to further competition. The staff recommends that for the time being, only nonsubstantive revisions be made to the structure of the Part 80 rules, to simplify and provide clarity to licensees and applicants.

288 *Maritime Third Report and Order*, 13 FCC Rcd at 19856 ¶ 2.

289 *See* Auction Fact Sheet at http://www.fcc.gov/wtb/auctions/coast/coastfct.html.

PART 90 – PRIVATE LAND MOBILE RADIO SERVICES.

Description

Part 90[290] contains licensing, technical, and operational rules for the group of mobile services historically described as "private land mobile radio services" or "PLMRS." Services regulated under this rule part include commercial services such as Specialized Mobile Radio (SMR) and private carrier paging (PCP), non-commercial services such as public safety, and services that are used by utilities, transportation companies, and other businesses for both commercial and private internal purposes.

Prior to the passage of the Omnibus Budget Reconciliation Act of 1993 (OBRA),[291] all Part 90 services were classified as private, *i.e.*, non-common carrier, services. With the passage of OBRA, however, Congress reclassified 800 MHz and 900 MHz SMR, PCP, and some 220 MHz and Business Radio services as commercial mobile radio services or "CMRS," and required CMRS providers in these services to be regulated as common carriers.[292] The regulatory status of non-CMRS Part 90 services was not affected by OBRA, and these services continue to be classified as private services.

Part 90 contains 22 subparts. Some of these subparts apply generally to all Part 90 licensees, while others establish licensing, technical, and operational rules for specific services.[293] In general, the rules in this part: (1) specify the frequency bands in which each service operates; (2) define the service area of licenses in each frequency band; (3) establish minimum construction or coverage requirements for licensees; and (4) define technical limits on operation (*e.g.*, antenna height, transmitter power) to prevent interference. For certain CMRS services, Part 90 also contains subparts dealing with the auction and award of licenses,[294] although many of these rules have since been consolidated in Part 1.

For purposes of the Biennial Regulatory Review, the analysis of Part 90 in this report focuses on those subparts that affect CMRS providers:

Subpart L - Authorizations in 470-512 MHz Band
Subparts M, X - Intelligent Transportation Systems Radio Service/Auction Rules
Subpart P - Paging Operations
Subparts S, U, V - 800/900 MHz SMR Service/Auction Rules
Subparts T, W - 220 MHz Service/Auction Rules

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290 47.C.F.R. Part 90.

291 Omnibus Budget Reconciliation Act of 1993, Pub. Law No. 103-66. 107 Stat. 312 (largely codified at 47 U.S.C. § 332 *et seq.*) (1993 Budget Act or OBRA).

292 *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411 (1994) (*CMRS Second Report and Order*).

293 *See, e.g.*, Part 90, subpart L ("Authorization and Use of Frequencies in the 470-512 MHz Band").

294 *See, e.g.*, Part 90, subpart U ("Competitive Bidding Procedures for the 900 MHz Specialized Mobile Radio Service").

Purpose

The purpose of the Part 90 rules is to establish basic ground rules for assignment of spectrum in Part 90 services, to ensure efficient spectrum use by licensees, and to prevent interference.

Analysis

Status of Competition

As detailed in the *Fifth Competition Report*, Part 90 CMRS providers operate in an environment that is marked by significant and increasing competition in mobile telephony, paging/messaging, and mobile data.[295]

Advantages

The Part 90 rules provide a clear, predictable structure for the assignment and use of spectrum. In Part 90 frequency bands that are licensed exclusively to CMRS providers (*e.g.*, SMR), auction rules promote efficient licensing of spectrum to those entities that value it the most. In other bands, site-specific licensing and frequency coordination are used to promote efficient spectrum use.

Disadvantages

The Part 90 rules impose limited administrative and technical burdens that are inherent to the licensing process and that require compliance with technical and operational rules.

Recent Efforts

The Commission has recently made changes to Part 90 in several rulemaking proceedings, as described in greater detail within this Staff Report. In the *Universal Licensing* proceeding, the Commission eliminated many of the service-specific licensing rules in Part 90 as part of its consolidation of all wireless licensing rules into Part 1.[296] The Commission also made numerous changes to Part 90 rules in the recently adopted Report and Order in the Part 90 Biennial Regulatory Review proceeding.[297]

Recommendation

In general, the rules in this part are integral to the basic licensing and spectrum management functions performed by the Commission. The necessity for these rules is also not significantly affected by changes in the level of competition in wireless services. Moreover, as noted above, the Commission has significantly

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295 *Fifth Competition Report*, *supra*, at 9-27, 36-63.

296 *Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, Report and Order*, 13 FCC Rcd 21027 (1998); *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11145 (1998).

297 *In the Matter of 1998 Biennial Regulatory Review – 47 C.F.R. Part 90 - Private Land Mobile Radio Services*, WT Docket No. 98-182, RM-9222, *Report and Order and Further Notice of Proposed Rule Making*, FCC 00-235 (rel. July 12, 2000).

revised and streamlined the Part 90 rules in several recent proceedings. Therefore, the staff concludes that significant modification or repeal of the Part 90 rules is not necessary at this time. However, where modifications could be made to streamline the rules in specific subparts, the staff has so noted in the detailed analysis of those Part 90 subparts.

PART 90, SUBPART L – REGULATIONS FOR AUTHORIZATION AND USE OF FREQUENCIES IN THE 470-512 MHZ BAND

Description

Part 90, subpart L[298] governs the authorization and use of the 470-512 MHz band by both commercial and private land mobile stations. Frequencies in the 470-512 MHz band are shared with UHF-TV channels 14-20, and are therefore only available in eleven cities, with different frequencies allocated in each market. Originally, channels in the 470-512 MHz band were allocated to seven frequency pools based on category of eligibility. In 1997, the Commission eliminated the separate allocation to these pools and created a General Access Pool to permit greater flexibility and foster more effective and efficient use of the 470-512 MHz band. Under current rules, all unassigned channels, including those that subsequently become unassigned, are considered to be in the General Access Pool and are available to all eligible licensees on a first-come, first-served basis. If a channel is assigned in an urbanized area, however, subsequent authorizations on that channel will only be granted to users from the same category.[299]

In general, the rules in subpart L: (1) specify the frequencies available for assignment in the 470-512 MHz band; (2) define the location of stations and service area of licenses in each frequency block; (3) establish minimum loading requirements for licensees; and (4) define technical limits on operation (*e.g.*, antenna height, transmitter power) to prevent interference. In accordance with these rules, new applicants may apply for only one channel at a time.[300] Licensees are required to show that any assigned channels in this band in a particular urbanized area are at full capacity before they can be assigned additional 470-512 MHz channels in that area.[301] The rules in this part also specify the minimum allowable distance between co-channel stations.[302] For purposes of loading requirements, licensees in the 470-512 MHz band are divided into two groups: the Public Safety Pool and the Industrial/Business Pool.[303] After loading a channel to full capacity, a licensee may apply for another channel.[304] Current licensees may use existing loading to satisfy this requirement and apply for more than one channel at one time. Licensees in the 470-512 MHz band that are operating above full capacity may use those units to qualify for additional channels. Licensees operating in other frequency bands may also use existing licensed units to qualify for more than one channel at one time.

Purpose

The purpose of the subpart L rules is to establish basic ground rules for assignment of spectrum in the 470-512 MHz service, to ensure efficient spectrum use by licensees, and to prevent interference with UHF television stations operating on the shared frequencies.

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298 47 C.F.R. Part 90, subpart L.

299 The seven categories of eligible users are: (1) Public safety; (2) Power and telephone maintenance licensees; (3) Special industrial licensees; (4) Business licensees; (5) Petroleum, forest products, and manufacturers licensees; (6) Railroad, motor carrier, and automobile emergency licensees; and (7) Taxicab licensees. 47 C.F.R. § 90.311.

300 47 C.F.R. § 90.311.

301 *Id.*

302 47 C.F.R. § 90.307.

303 47 C.F.R. § 90.313(a).

304 47 C.F.R. § 90.313(c).

Analysis

Status of Competition

Because land mobile use of the 470-512 MHz band is limited by the sharing of the band with broadcast channels 14-20, service in the band has been narrowly geared to industrial and public safety use in a limited number of urban locations. Demand for these channels to provide commercial services to consumers has been largely absent.

Advantages

The subpart L rules provide a clear, predictable structure for the assignment and use of spectrum. Site-specific licensing and frequency coordination are used to promote efficient spectrum use.

Disadvantages

The subpart L rules impose limited administrative and technical burdens that are inherent to the licensing process and compliance with technical and operational rules. Because the band is shared with television broadcast stations, the technical burden imposed on licensees to prevent interference with co-channel operations is somewhat greater than in other bands allocated exclusively to wireless services.

Recent Efforts

In the *Second Report and Order* in the Refarming proceeding, the Commission authorized centralized trunking in the 470-512 MHz band if a licensee has an exclusive service area or obtains consent from all co-channel and adjacent channel licensees and frequency coordination is obtained. [305]

Recommendation

In general, the rules in this part are integral to the basic licensing and spectrum management functions performed by the Commission. The necessity for these rules is also not significantly affected by changes in the level of competition in wireless services. The staff concludes that significant modification or repeal of the subpart L rules is not necessary at this time.

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[305] *See Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, Report and Order,* 10 FCC Rcd 10076 (1995); *Memorandum Opinion and Order*, 11 FCC Rcd 17676 (1996); *Second Report and Order*, FCC 97-61 (rel. Mar. 12, 1997). *See* 47 C.F.R. § 90.187(b). The FCC has recognized two types of trunking: centralized and decentralized. A centralized trunked system uses one or more control channels to transmit channel assignment information to the mobile radios. In a decentralized trunked system, the mobile radios scan the available channels and find one that is clear.

PART 90, SUBPARTS M (INTELLIGENT TRANSPORTATION SYSTEMS RADIO SERVICE) AND X (COMPETITIVE BIDDING RULES FOR THE LOCATION AND MONITORING SERVICE)

Description

Part 90, subpart M[306] contains licensing, [technical], and operational rules for the Intelligent Transportation Systems (ITS) radio service. ITS radio service consists of two sub-categories: the Location and Monitoring Service (LMS) and the Dedicated Short Range Communications Service (DSRCS).

Location and Monitoring Systems (LMS)

LMS systems are used for such functions as vehicle tracking and location, automated toll collection, and other communications functions related to vehicles. LMS systems operate in the 902-928 MHz band, which they share with federal government radiolocation systems, Industrial, Scientific and Medical devices (LMS use is secondary to both of these uses), licensed amateur radio operations, and unlicensed Part 15 equipment (both of which are secondary to LMS and all other uses of the band).

The subpart M LMS service rules, governing the licensing of LMS in the 902-928 MHz band, were adopted in 1995.[307] In general, the subpart M rules: (1) specify the frequency bands in which LMS licensees operate; (2) define the service area of LMS licenses in each frequency band; (3) establish minimum construction or coverage requirements for LMS licensees; and (4) define technical limits on operation (*e.g.*, antenna height, transmitter power) to prevent interference.[308] The technical rules for the 902-928 MHz band contain additional provisions governing secondary operation by Part 15 equipment users and amateur licensees in the LMS band to reduce potential interference between these uses and LMS operations. The rules also establish limitations on LMS systems' interconnection with the public switched network and set forth a number of technical requirements intended to ensure successful coexistence of all the services authorized to operate in the band.

The LMS competitive bidding rules, set forth in Part 90, subpart X,[309] were adopted in 1998.[310] Section 90.1101[311] states that the auction of LMS licenses is generally subject to the competitive bidding

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306 47 C.F.R. Part 90, subpart M.

307 *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Report and Order*, 10 FCC Rcd 4695 (1995) (*LMS Report and Order*).

308 The definition of LMS also includes existing Automatic Vehicle Monitoring operations below 512 MHz. Unlike other LMS operations, LMS systems below 512 MHz may neither offer service to the public nor provide service on a commercial basis. *See LMS Report and Order*, 10 FCC Rcd at 4738, ¶ 86.

309 47 C.F.R. Part 90, subpart X.

310 *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, Second Report and Order*, 13 FCC Rcd 15182 (1998) (*Second LMS Report and Order*).

311 47 C.F.R. § 90.1101.

procedures set forth in Part 1, subpart Q. Section 90.1103[312] sets forth service-specific rules defining designated entities in LMS. Pursuant to these rules, LMS licenses were auctioned by the Commission in 1999.

Dedicated Short Range Communications Service (DSRCS)

In October 1999, the Commission allocated 75 MHz of spectrum at 5.850-5.925 GHz for use by DSRCS systems operating in the Intelligent Transportation System radio service.[313] The Commission amended subpart M by adding technical rules establishing power, emission, and frequency stability limits for DSRCS operations. However, the Commission has deferred consideration of DSRCS licensing and service rules and spectrum channelization plans to a later proceeding, pending promulgation of standards by the Department of Transportation.

Purpose

The purpose of Part 90, subpart M is to provide a regulatory framework that allows entities to effectively deploy radio-based devices and systems to enhance safety of life and protection of property on the nation's highways, railways and other transportation corridors, without causing harmful interference to other radio services.

Analysis

Status of Competition

The services provided by LMS operators, such as vehicular tracking, tend to be niche services, and competition in these sectors appears to be more limited than in other types of wireless services. In addition, many LMS licensees are state and local government entities rather than commercial enterprises. The number of LMS licensees has increased, however, since the Commission completed its auction of multilateration LMS licenses in March 1999. As these licensees begin to deploy services, the level of competition in LMS could increase.

Advantages

The Part 90, subpart M rules provide a clear, predictable structure for the assignment and use of spectrum. Geographic area licensing of multilateration systems minimizes the administrative burden involved in obtaining a license and thus avoids undue delay in the authorization of new services to the public. Minimal technical standards facilitate the introduction of new technologies.

Disadvantages

The Part 90, subpart M rules impose some administrative burdens inherent to the licensing process and to compliance with technical and operational rules. The provisions relating to secondary use of the LMS band by Part 15 users and amateur licensees impose some additional technical burdens on LMS licensees to avoid and resolve interference between their systems and these other uses.

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312 47 C.F.R. § 90.1103.

313 *Amendment of Parts 2 and 90 of the Commission's Rules to Allocate the 5.850-5.925 GHz Band to the Mobile Service for Dedicated Short Range Communications of Intelligent Transportation Services, Report and Order*, 13 FCC Rcd 14321 (1999).

Recent Efforts

Aside from the DSRCS proceeding discussed above, the Commission has not significantly revised the Part 90, subpart M rules since the LMS auction.

Recommendation

In general, the rules in subparts M and X are integral to the basic licensing and spectrum management functions performed by the Commission, and the necessity for these rules is not significantly affected by changes in competition. Therefore, the staff concludes that significant modification or repeal of the rules is not necessary at this time. The staff recommends continuing to monitor developments in order to determine whether any additional rule modifications are necessary to foster competition.

PART 90, SUBPART P – PAGING OPERATIONS IN THE 929 MHZ BAND

Description

Part 90 subpart P contains licensing, technical, and operational rules for paging operations in the 929 MHz Band. This rule part includes services such as commercial paging and private carrier paging (PCP). Licensees may operate on exclusive channels or designated shared channels on a CMRS or PMRS basis.

In general, the rules in this subpart (1) specify the exclusive channels and shared channels; and (2) define technical limits on operation (*e.g.*, antenna height, transmitter power) to prevent interference. For paging operations on exclusive channels, the licensees are subject to Part 22 of the Commission's rules regarding the Paging and Radiotelephone Service.

Purpose

The purpose of the Part 90, subpart P rules is to establish basic ground rules for assignment and use of exclusive or shared channels in the 929 MHz Band and to prevent interference.

Analysis

Status of Competition

As detailed in the *Fifth Competition Report*, Part 90 paging providers operate in an environment that is marked by significant and increasing competition in mobile telephony, paging/messaging, and mobile data.[314]

Advantages

The Part 90, subpart P rules provide a clear, predictable structure for the assignment and use of spectrum. In Part 90, Subpart P, frequency bands that are licensed on an exclusive basis are subject to competitive bidding. The shared channels are available to all eligible entities.

Disadvantages

The Part 90, subpart P rules impose limited administrative and technical burdens that are inherent to the licensing process and compliance with technical and operational rules.

Recent Efforts

The Commission has made significant changes to its Part 90, subpart P rules in recent years. In the mid-1990s, the Commission converted the authorization of stations in the 929 MHz Band from the original site-by-site procedure to a geographic area licensing process. The *Second Report and Order* established geographic area licensing for 929 MHz paging and adopted competitive bidding procedures.[315] The *Third Report and Order* changed the geographic area licensing of 929 MHz paging from MTAs to MEAs and

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[314] *Fifth Competition Report*, *supra*, at 9-27, 36-63.

[315] *See Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 2732 (1997) (*Second Report and Order*).

clarified that spectrum will automatically revert to the geographic area licensee in all instances where a non-geographic area incumbent licensee permanently discontinues service, as well as allowing geographic area licensees to partition their licenses.[316] The Commission auctioned geographic licenses for the exclusive channels in the 929 MHz band.[317] Furthermore, the Part 22 Rules regarding paging now apply to all 929 MHz licensees on exclusive channels. More recently, most of the application filing rules were moved from this subpart to Part 1 in connection with implementation of electronic filing procedures and the Universal Licensing System.

Recommendation

In general, the rules in this part are integral to the basic licensing and spectrum management functions performed by the Commission. The necessity for these rules is also not significantly affected by changes in the level of competition in wireless services. Moreover, as noted above, the Commission has significantly revised and streamlined the Part 90, subpart P rules and consolidated them with the Part 22 rules. The remaining rules are necessary for the operation and interference protection for licensees in the shared channels in the 929 MHz Band. Therefore, the staff concludes that significant modification or repeal of the Part 90, subpart P rules is not necessary at this time.

316 *See Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030 (1999) (*Third Report and Order*).

317 *See* 929 and 931 MHz Paging Auction Closes, *Public Notice*, DA 00-508 (rel. Mar. 6, 2000).

PART 90, SUBPARTS S (REGULATIONS FOR LICENSING AND USE OF FREQUENCIES IN THE 800 AND 900 MHZ BANDS), AND U AND V (COMPETITIVE BIDDING PROCEDURES FOR THE 900 AND 800 MHZ SERVICE)

Description

Subpart S[318] contains licensing, technical, and operational rules the 800 MHz and 900 MHz Specialized Mobile Radio (SMR) services, as well as non-commercial services above 800 MHz, *i.e.*, public safety services and services that are used by utilities, transportation companies, and other businesses for internal purposes. Prior to the passage of the Omnibus Budget Reconciliation Act of 1993 (OBRA),[319] all of these services were described as "private land mobile radio services" or "PLMRS," and were classified as private, *i.e.*, non-common carrier, services. With the passage of OBRA, however, Congress reclassified 800 MHz and 900 MHz SMR services as commercial mobile radio services or "CMRS," and required all CMRS providers to be regulated as common carriers.[320] The regulatory status of non-CMRS Part 90 services was not affected by OBRA, and these services continue to be classified as private land mobile radio services.

In general, the rules in Subpart S: (1) specify the frequency bands in which each service operates; (2) define the service area of licenses in each frequency band; (3) establish minimum construction or coverage requirements for licensees; and (4) define technical limits on operation (*e.g.*, antenna height, transmitter power) to prevent interference.

Subparts U and V[321] contain competitive bidding rules and procedures for 900 MHz SMR and 800 MHz SMR services, respectively. The rules in these subparts: (1) identify the licenses to be sold by competitive bidding; (2) establish the competitive bidding mechanisms to be used in 900 and 800 MHz SMR auctions; (3) establish application, disclosure and certification procedures for short- and long-form applications; (4) specify down payment, withdrawal, and default mechanisms; (5) provide definitions of gross revenues for designated entities and specify the bidding credits for which designated entities qualify; and (6) provide eligibility and technical requirements for partitioning and disaggregation.

The original Subpart S rules for were adopted by the Commission in 1982, and provided for site-based licensing of 800 and 900 MHz channels.[322] Following the passage of OBRA, the Commission initiated rulemakings to use geographic licensing and auctions in the 800 MHz and 900 MHz services. In PR Docket 89-553, the Commission revised Subpart S to provide for geographic licensing of the 900 MHz SMR service, and replaced the previous site-based licensing rules with competitive bidding rules by adding Subpart U to Part 90.[323] In PR Docket No. 93-144, the Commission adopted geographic licensing rules for

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318 47 C.F.R. Part 90, subpart S.

319 Omnibus Budget Reconciliation Act of 1993, Pub. Law No. 103-66. Title VI § 6002(b)(2)(a), (b). 107 Stat. 312 (largely codified at 47 U.S.C. § 332 *et seq*.)

320 *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411 (1994).

321 47 C.F.R. Part 90, subparts U and V.

322 *Amendment of Part 90 of the Commission's Rules to Release Spectrum in the 806-821/851-866 MHz Bands and to Adopt Rules and Regulations Which Govern Their Use, Second Report and Order*, 90 FCC 2d 1281 (1982), *recon. Memorandum Opinion and Order*, 95 FCC 2d 477 (1983).

323 *Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200*

800 MHz SMR, and adopted the competitive bidding rules in Subpart V.[324] In both services, the Commission grandfathered all previously granted site-based SMR licenses. Consequently, many of the Subpart S rules governing operation by site-based SMR licensees remain in effect as to these grandfathered licensees. In 1997, the Commission conducted the 900 MHz auction and awarded geographic area licenses. Geographic licensing of 800 MHz licensing has been divided into phases. The 800 MHz upper band auction was held in December 1997; the 800 MHz lower band and General Category auctions are scheduled for later this year.

Purpose

The purpose of the Subpart S rules is to establish basic ground rules for the assignment of spectrum to the affected SMR licensees, to ensure efficient spectrum use by licensees, and to prevent interference. The competitive bidding rules of Subparts U and V help to ensure access to new telecommunications offerings by ensuring that market forces guide the allocation of licenses so that all customer segments are served with the greatest economic efficiency. Additionally, the designated entity provisions of the competitive bidding rules are intended to provide opportunities for small businesses to participate in the provision of telecommunications services.

Analysis

Status of Competition

As detailed in the *Fifth Competition Report*, Part 90 SMR providers operate in an environment that is marked by significant and increasing competition in mobile telephony, paging/messaging, and mobile data. Some of the larger SMR carriers, particularly Nextel and Southern, provide digital wide-area voice services that compete with cellular and PCS. Other SMR carriers provide more traditional dispatch service on a local or regional basis. Although SMR channels have been used primarily for voice communications, systems are also being developed to carry data and facsimile services. Additionally, new digital SMR technology is leading to the development of new features and services, such as two-way acknowledgment paging, teleconferencing, and voicemail.

Advantages

The Subpart S rules provide a clear and predictable structure for the assignment and use of SMR spectrum, and afford substantial flexibility to licensees to choose the type of service they will provide based on market demand. The Subpart U and V auction rules promote efficient licensing of SMR spectrum to those entities that value it the most.

Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, Second Report and Order and Second Further Notice of Proposed Rule Making, 10 FCC Rcd 6884 (1995) (*900 MHz Second Report and Order*).

[324] *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, First Report and Order, Eighth Report and Order and Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463 (1995) (*800 MHz First Report and Order*).

Disadvantages

There continue to be differences between the licensing, technical, and operational rules that apply to grandfathered site-based SMR licenses and those that apply to geographic area licenses. This multiplicity of rules is potentially burdensome to SMR licensees who have both geographic and site-based systems, which may result in inconsistent regulatory obligations (*e.g.*, buildout requirements) for different portions of their systems.

Recent Efforts

In the past year, the Commission has reconsidered and revised some of its 800 MHz SMR rules in anticipation of the SMR lower band and General Category auctions.[325] The Commission has also given incumbent SMR licensees with wide-area systems the option of applying the same buildout and coverage requirements as geographic licensees, thus giving these incumbents greater flexibility and parity with geographic licensees.[326]

Recommendation

In general, the rules in Subpart S are integral to the basic licensing and spectrum management functions performed by the Commission. Additionally, the need for these rules is not significantly affected by changes in the level of competition in wireless services. However, there are several rule sections that contain outdated or burdensome requirements. For example, the staff recommends that the Commission consider eliminating section 90.655,[327] which requires individual end user licensing of SMR facilities that require Federal Aviation Administration clearance, have a significant environmental effect, or are located in a radio frequency "quiet zone." The staff recommends that similar consideration be given to removing the requirement that site-based SMR licensees provide loading data in order to renew their licenses.[328] We also recommend removal of section 90.607(a),[329] which requires SMR applicants to provide a statement describing the applicant's "planned mode of operation." Such a requirement appears to serve no regulatory purpose, and is inconsistent with the Commission's policies regarding flexible use of spectrum.

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[325] *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Second Report and Order*, 12 FCC Rcd 19079 (1997) (*Second Report and Order*).

[326] *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Memorandum Opinion and Order on Remand*, 14 FCC Rcd 21679 (*Fresno Remand Order*).

[327] 47 C.F.R. § 90.655.

[328] 47 C.F.R. § 90.658.

[329] 47 C.F.R. § 90.607(a).

PART 90, SUBPARTS T (REGULATIONS FOR LICENSING AND USE OF FREQUENCIES IN THE 220-222 MHZ BAND) AND W (COMPETITIVE BIDDING PROCEDURES FOR THE 220 MHZ SERVICE)

Description

Part 90, subpart T[330] contains licensing, technical, and operational rules for the 220-222 MHz (220 MHz) service. In general, the rules in this part: (1) define the service area of 220 MHz licenses; (2) specify the permissible operations for authorized systems; (3) specify the frequencies available to 220 MHz licensees; (4) establish license terms; (5) establish the minimum construction or coverage requirements for 220 MHz licensees; and (6) define technical limits on operation (*e.g.*, antenna height, field strength) to prevent interference.

Part 90, subpart W[331] contains competitive bidding rules and procedures for commercial licenses in the 220 MHz service. The rules in this subpart: (1) specify which 220 MHz licenses are eligible for competitive bidding; (2) establish the competitive bidding mechanisms to be used in 220 MHz auctions; (3) establish application, disclosure and certification procedures for short- and long-form applications; and (4) specify down payment, withdrawal, and default mechanisms.

The original Subpart T rules for the 220 MHz service were adopted by the Commission in 1991.[332] The Commission intended the 220 MHz band to be used for the development of new spectrally efficient technologies that would support provision of two-way narrowband services, including mobile voice, dispatch, and messaging. In order to stimulate greater spectral efficiency in the band, the Commission adopted a band plan for the 220 MHz service based on 5 kHz channels, a narrower bandwidth than was generally used in other private land mobile services. As originally designed, the band plan provided for site-based licensing of 220 MHz channels. Between 1991 and 1993, the Commission awarded approximately 3,800 site-based licenses, as well as a small number of nationwide licenses, using lotteries to select from among mutually exclusive applicants (referred to as "Phase I" licensing). However, the Commission discontinued licensing under this approach due to the large volume of applications received, concerns regarding possible speculation in applications, and judicial challenges to the Phase I licensing procedures.

In 1993, Congress passed the Omnibus Budget Reconciliation Act, which conferred authority on the Commission to award licenses by competitive bidding.[333] Based on its new authority, the Commission sought to develop new licensing rules for 220 MHz spectrum that was not licensed in Phase I. In 1997, the Commission adopted "Phase II" licensing rules, substantially revising Subpart T to provide for licensing based on regional and nationwide geographic areas rather than site-specific licenses.[334] The Commission

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330 47 C.F.R. Part 90, subpart T.

331 47 C.F.R. Part 90, subpart W.

332 The 220-222 MHz band was initially allocated in 1988. *See Amendment of Part 2 of the Commission's Rules Regarding the Allocation of the 216-225 MHz Band, Report and Order*, 3 FCC Rcd 5287 (1988). Service rules were adopted in 1991. *See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, Report and Order*, 6 FCC Rcd 2356 (1991).

333 Omnibus Budget Reconciliation Act of 1993, Pub. Law No. 103-66. Title VI § 6002(b)(2)(a), (b). 107 Stat. 312 (largely codified at 47 U.S.C. § 332 *et seq.*).

334 *See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-*

also replaced the previous lottery-based licensing rules with competitive bidding rules by adding Subpart W to Part 90.[335] As part of the conversion to geographic licensing and auctions, the Commission grandfathered all previously granted Phase I licenses. Consequently, the Subpart T rules governing operation by site-based 220 MHz licensees remain in effect as to these grandfathered licensees. In September-October 1998 and June 1999, the Commission conducted Phase II auctions of 220 MHz spectrum pursuant to the rules and procedures set forth in Subpart W.

Purpose

The purpose of the Subparts T and W rules is to facilitate the assignment of spectrum in the 220-222 MHz service, to ensure efficient spectrum use by licensees, and to prevent interference through establishment of technical limits on operation (*e.g.*, siting requirements and limits on transmitter power).

Analysis

Status of Competition

Licensees in the 220 MHz service are permitted to provide voice, data, paging, and fixed communications. Because of the limited amount of spectrum in the 220 MHz band, most licensees offer narrowband services that are not spectrum-intensive. Trunked dispatch has become a particularly prevalent application, particularly as the 800/900 MHz SMR bands are used increasingly for mobile telephony. Since the award of Phase II licenses in 1998 and 1999, many 220 MHz licensees have begun to deploy their networks, and dispatch subscribership in the 220 MHz band grew 35 percent in 1999.[336] Suppliers of 220 MHz equipment anticipate that there will be increased buildout and demand for service in the next several years.[337] Thus, there is potential for the 220 MHz service to be increasingly competitive and to contribute to inter-service CMRS competition.

Advantages

The Subpart T rules, particularly the rules applicable to Phase II geographic licensees, provide a clear and predictable structure for the assignment and use of 220-222 MHz band spectrum, and afford substantial flexibility to licensees to choose the type of service they will provide based on market demand. The Subpart W auction rules promote efficient licensing of 220 MHz spectrum to those entities that value it the most.

Disadvantages

Although the Commission has recently simplified and streamlined the 220 MHz rules in many respects (see below), there continue to be differences among the licensing, technical, and operational rules that apply to grandfathered Phase I site-based licenses and those that apply to Phase II geographic area licenses. This multiplicity of rules is potentially burdensome to 220 MHz licensees who have systems comprised of both Phase I and Phase II licenses, which may result in inconsistent regulatory obligations (*e.g.*, buildout requirements) for different portions of their systems.

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222 MHz Band by the Private Land Mobile Radio Services, Third Report and Order, 12 FCC Rcd 10943 (1997) (*220 MHz Third Report and Order*).

335 *Id.*

336 *Fifth Competition Report*.

337 *Id.*

Recent Efforts

In several recent orders, the Commission has taken steps to reduce regulatory burdens and afford greater flexibility to 220 MHz licensees. For example, the original 220 MHz rules required licensees to provide two-way land mobile service on a primary basis, and allowed use of the band for fixed services or for paging only on an "ancillary" basis. In the *220 MHz Third Report and Order*, the Commission eliminated the ancillary use limitation, thus allowing licensees to provide any or all of these services on a co-primary basis.[338] The Commission has also adopted rules permitting partitioning and disaggregation of 220 MHz licenses, and has eliminated the "40-mile rule" that previously limited the number of Phase I licenses that an individual licensee could hold in a given geographic area.[339] Finally, the Commission recently eliminated mandatory spectrum efficiency standards that had previously been adopted for provision of voice and data over 220 MHz systems that combined contiguous 5 kHz channels.[340] The Commission concluded that mandating technical standards was unnecessary because market forces would spur efficient spectrum use, and that retaining mandatory standards could impair rather than encourage technical innovation.[341]

Recommendation

In general, the rules in Subpart T are integral to the basic licensing and spectrum management functions performed by the Commission. Moreover, as noted above, the Commission has significantly revised and streamlined the 220 MHz rules in recent proceedings. Therefore, the staff concludes that substantial modification or repeal of the 220 MHz rules is not necessary at this time. However, the staff recommends that consideration be given to whether certain rules applicable to Phase I licensees continue to be necessary. For example, section 90.737 imposes certain reporting requirements and restrictions on assignments of unconstructed Phase I licenses that were intended to prevent speculation and trafficking in licenses awarded by lottery.[342] Now that licensing by lottery has been discontinued, however, these rules may actually impede the transferability of 220 MHz spectrum. The staff therefore recommends that consideration be given to eliminating these rules.

Similarly, as noted elsewhere in this Staff Report, the Commission has consolidated its competitive bidding rules in Part 1, with the goal of having future auctions be conducted in accordance with Part 1 rules. Therefore, to the extent that future auctions are necessary in the 220 MHz service, they will be governed by Part 1, and the continued presence of separate 220 MHz auction rules in Subpart W appears to be redundant. The staff recommends that consideration be given to eliminating these rules.

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338 *See 220 MHz Third Report and Order*, 12 FCC Rcd 10943 (1997).

339 *See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, Fourth Report and Order*, 12 FCC Rcd 13453 (1997).

340 *See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, Memorandum Opinion Order on Reconsideration*, 13 FCC Rcd 14569 (1998).

341 *Id.*

342 47 C.F.R. § 90.737.

PART 95 – PERSONAL RADIO SERVICES, SUBPART F – 218-219 MHZ SERVICE

Description

Part 95[343] contains licensing, technical, and operational rules for the Personal Radio Services, a collection of wireless services that are generally used by individuals for personal communications and to support the radio needs of their activities and interests. These services include the General Mobile Radio Service (Subpart A), the Family Radio Service (Subpart B), the Radio Control (R/C) Radio Service (Subpart C), and the Citizens Band (CB) Radio Service (Subpart D). The Personal Radio Services also include the Low Power Radio Service (Subpart G) and the Wireless Medical Telemetry Service (Subpart H), which are used to support auditory assistance and medical applications.

For purposes of the Biennial Regulatory Review, the analysis of Part 95 in this report focuses on the 218-219 MHz Service (Subpart F), which is unique among the Personal Radio Services in that it may be used for commercial applications, it is licensed on a geographic exclusive-use basis, and its licensure is subject to the Commission's competitive bidding procedures.

Part 95, subpart F was originally created to support the Interactive Video and Data Service (IVDS), a short-distance communications service by which licensees could provide information, products, or services to, and allow interactive responses from, subscribers within the licensee's service area. In 1998, the Commission renamed IVDS the 218-219 MHz Service and revised Subpart F to allow 218-219 MHz licensees greater flexibility to identify and structure services in response to market demand.[344] Under the current service rules, both common carrier and private operations are permitted, and both one- and two-way communications are allowed.

The licensing and technical rules for the 218-219 MHz Service are contained in Subpart F, although certain rules that are broadly applicable to all wireless telecommunications services (including the 218-219 MHz Service) have been consolidated in Part 1.[345]

Purpose

Part 95, subpart F contains the licensing and technical rules for the administration of a radio service in the 218-219 MHz band. The rules are intended to provide licensees with the maximum flexibility to structure their services while protecting over-the-air television reception of TV Channel 13.

Analysis

Status of Competition

The original IVDS service was generally not commercially successful, and little or no competition emerged to use the 218-219 MHz band to provide interactive television applications. Under the revised service rules, 218-219 MHz Service licensees have proposed wireless data applications such as meter reading and vehicle tracking services. Accordingly, the expectation is that the 218-219 MHz Service could soon

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343 47 C.F.R. Part 95.

344 *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 13 FCC Rcd 19064 (1988).

345 47 C.F.R. Part 1.

provide sources of competition for other wireless services. However, this competition is developing slowly, due in part to (1) the limited permissible use of the service before its recent restructuring; (2) the fact that many 218-219 MHz Service markets are not currently licensed due to payment defaults; and (3) the on-going implementation of the service restructuring.

Advantages

The Part 95, subpart F rules provide licensees with the flexibility to identify and implement services in response to market demand. Licensees no longer have to operate within the context of rules designed to support a specific application – interactive television – and instead enjoy a freer hand in structuring service under their licenses. For example, technical rules that mandated specific antenna height-power ratios have been replaced with general interference protection requirements, and rigid construction benchmarks have been replaced with a "substantial service" requirement that is more suitable to niche services that may develop in the 218-219 MHz Service.

Disadvantages

There are no significant disadvantages to the Subpart F rules at this time, although the rules do impose limited administrative and technical burdens that are inherent to the licensing process and that are necessary for compliance with technical and operational rules. As more licensees begin providing service and we gain more experience in the administration of the 218-219 MHz Service, we will continue to examine whether any of these rules impose unnecessary burdens and costs and could therefore be candidates for additional streamlining.

Recent Efforts

The Commission has made significant changes to its Part 95, subpart F rules in recent years. As noted above, the Commission renamed the service and revised the rules in 1998 to afford more flexibility to licensees over use of the spectrum. The Commission adopted additional sweeping changes to the 218-219 MHz service in September 1999.[346] The Wireless Telecommunications Bureau is still implementing these changes, and several petitions for reconsideration remain pending in the docket. In addition, the 218-219 MHz Service has been affected by a number of broadly applicable rulemaking actions, such as the Universal Licensing System (ULS) proceeding that was initiated in conjunction with the 1998 Biennial Regulatory Review.

Recommendation

Due to the recent comprehensive evaluation and restructuring of the 218-219 MHz Service, no changes are recommended to this subpart at this time. The rules that were retained in the 1999 restructuring are an integral part of the basic licensing and spectrum management functions performed by the Commission and should be retained. Although there is presently only limited competition within the 218-219 MHz Service, this fact is primarily attributable to the narrow focus of the former rules that supported interactive television applications and the uncertainty surrounding the restructuring of the service. The staff anticipates the provision of competitive services within the 218-219 MHz Service, and will continue to

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[346] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, Report and Order and Memorandum Opinion and Order*, 15 FCC Rcd 1497 (1999).

monitor developments in order to determine whether any additional rule modifications are necessary to foster competition.

PART 100 – DIRECT BROADCAST SATELLITE SERVICE

Description

Part 100 was issued pursuant to the provisions of Title III of the Communications Act of 1934, as amended, which gives the Federal Communications Commission authority to regulate radio transmissions and to issue licenses for radio stations. Part 100 sets forth rules applicable to the Direct Broadcast Satellite Service (DBS), including public interest obligations, general licensing and application filing requirements, technical and operating requirements, and competitive bidding procedures.

Part 100 is organized into five sub-parts:

A- General Information
B- Administrative Procedures
C- Technical Requirements
D-Operating Requirements
E- Competitive Bidding Procedures for DBS

Purpose

Part 100 provides rules under which the International Bureau licenses DBS systems. The rules are designed to promote fair competition in the multi-channel video programming distribution market. Sections of Part 100 also have provisions: (1) to assure protection from impermissible levels of interference; (2) to assure compliance with international regulations; (3) to assure the timely construction and operation of authorized space stations; (4) to assure the timely provision of sufficient information to allow for processing of applications; (5) to assure compliance with license specifications and conditions, as well as with Commission rules and regulations; and (6) to provide competitive bidding procedures for the provision of DBS services.

Analysis

Status of Competition

The DBS service competes with other multi-channel video program distribution services (*e.g.*, cable). Today there are two major providers of DBS. The service as a whole, and the individual companies are growing rapidly in subscribership and have the capital to offer new digital technologies to consumers. Additionally, the Commission has permitted mergers in the DBS industry that have placed the two DBS licensees in a stronger position to compete with other suppliers of multi-channel video program distribution services (*e.g.*, cable TV systems, which are still today the dominant suppliers of multi-channel video program distribution services). Furthermore, the U.S. has entered into agreements with Mexico and Argentina, which allow those countries to provide Direct-to-Home services (similar to DBS) into the U.S. Finally, we anticipate auctioning additional DBS orbital slots that are allotted to the U.S. which will provide existing or new DBS providers the opportunity to further expand the service to U.S. consumers.

Advantages

Subpart A- General Information**:** This subpart includes the basis and purpose of this rule subpart. Specifically, it sets forth the Commission's statutory authority to regulate DBS, which fosters efficient

spectrum use. This subpart increases consumer choice and diversity in programming, as well as imposes political advertising rules on DBS providers.

Subpart B- Administrative Procedures: This subpart describes the eligibility criterion for DBS authorizations, including foreign ownership restrictions. It provides clear procedures for filing applications and procedures for evaluating whether applications are complete. This allows for efficient use of resources and ensures compliance with the Commission's rules.

Subpart C—Technical Requirements: This subpart provides technical standards and operating rules to minimize interference among DBS licensees.

Subpart D- Operating Requirements: Section 100.51 describes the Equal Employment Opportunities policy for DBS. This section promotes diversity in employment and creates expanded opportunities to provide service. Section 100.53 sets out geographic service rules for DBS providers. This ensures delivery of service to the public.

Subpart E- Competitive Bidding Procedures for DBS: This subpart describes the mechanism for competitive bidding for satellite DBS service. Competitive bidding awards DBS licenses to those firms that will most efficiently use orbital resources to compete in providing service. Further, it fosters efficient use of spectrum and the development of a competitive DBS market.

Disadvantages

Subpart A- General Information: Section 100.5 (DBS public interest obligations) may increase a licensees operating administrative and compliance costs. Further, this section may restrict the alternative uses of the resources that must now be set aside for public interest programming.

Subpart B- Administrative Procedures: This subpart could increase a licensee's administrative costs and hamper the introduction of new services. For example, if the milestone schedule for construction and operation of DBS systems is too long, it may result in the deployment of inefficient technologies. In the alternative, if the schedule is too short, it may result in a loss of a license if build out is delayed because of unforeseen technical problems.

Subpart C- Technical Requirements: These standards and operating rules, while preserving the operating environment today, could hamper the introduction of new services and restrict alternative uses of resources in the future.

Subpart D-Operating Requirements: Rules in this section might increase operating costs and limit potential use of resources.

Subpart E- Competitive Bidding Procedures for DBS: Satellite services in the planned frequency bands require international coordination prior to the commencement of operations (*e.g.*, when the plans are modified to accommodate new services). The value of the orbital location resource is uncertain if the international coordination process has not yet been completed.

Recent Efforts

As described in the staff report, the Commission has taken steps to streamline the regulation of DBS. The Commission issued an Notice of Proposed Rulemaking, which seeks comment on its proposals to

streamline the DBS rules by integrating the Part 100 DBS service rules into Part 25 (Satellite Communications), by eliminating duplicative rule sections, and by consolidating existing rule sections as appropriate.

Recommendation

Consistent with the outstanding Notice of Proposed Rulemaking, the staff recommends that all of the DBS rules contained in Part 100 be retained. It is anticipated that the entire Part 100 will be incorporated into Part 25 and Part 100 will be eliminated as a result of the outstanding proceeding.

PART 101 – FIXED MICROWAVE SERVICES

Description

Part 101[347] contains licensing, technical, and operational rules for the microwave services. Fixed microwave spectrum is primarily used to deliver video, audio, data, and control functions for other specific communications services from one point and/or hub to other points and/or subscribers for distribution. Most Part 101 application processing rules, technical standards, and operational requirements apply to all Part 101 services, but others apply only to specific services,[348] or to common carrier services but not private services (or vice versa).[349]

Part 101 was created in 1996 through consolidation of the rules for the common carrier and private operational fixed (POFS) microwave services contained in Parts 21 and 94.[350]

Part 101 contains 14 lettered subparts:

A – General
B – Applications and Licenses
C – Technical Standards
D – Operational Requirements
E – Miscellaneous Common Carrier Provisions
F – Developmental Authorizations
G – 24 GHz Services and Digital Electronic Message Service
H – Private Operational Fixed Point-to-Point Microwave Service
I – Common Carrier Fixed Point-to-Point Microwave Service
J – Local Television Transmission Service
K – [Reserved]
L – Local Multipoint Distribution Service
M – Competitive Bidding Procedures for LMDS
N – Competitive Bidding Procedures for the 38.6-40.0 GHz Band

Purpose

Part 101 sets forth application processing procedures, technical standards, and operational requirements for the microwave services. The Commission created the Part 101 rules to reduce or eliminate the differences in processing applications between common carriers and private operational fixed microwave service licensees, and to further the regulatory parity among these microwave services.[351]

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347 47 C.F.R. Part 101.

348 *See, e.g.*, 47 C.F.R. §§ 101.21(e), 101.61(c).

349 *See, e.g.*, 47 C.F.R. §§ 101.13, 101.15.

350 *Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, Report and Order*, 11 FCC Rcd 13449 (1996) (*Part 101 Order*).

351 *Id.*, 11 FCC Rcd at 13452-53.

Analysis

Status of Competition

Because the Part 101 microwave services encompass a variety of private and common carrier applications, and because some services are licensed on a point-to-point basis while others are licensed geographically, the level of competition varies greatly among individual microwave services.

The largest commercial deployment of Part101 microwave services has occurred in the 24 GHz (DEMS), 28 GHz (LMDS), and 39 GHz bands. The most significant operators in these bands, Teligent, Inc. (Teligent) and WinStar Communications, Inc. (WinStar), are currently concentrating on business customers. These operators are either now offering or are planning in the future to offer subscribers a variety of one- and two-way broadband services, such as video programming distribution, wireless local loop telephony, Internet access and other high speed data transmission services. Thus, if successful, licensees in these bands have the potential to create facilities-based competition in numerous industries, including high-speed broadband services. In other Part 101 services, licensees continue to rely on traditional point-to-point microwave systems to meet their operational support and critical infrastructure needs as opposed to using microwave technologies to directly access customers.

Advantages

The Part 101 rules provide for a unified regulatory approach for the microwave services, and eliminate the differences in processing applications between common carriers and POFS licensees that existed in the former rules. The Part 101 rules were adopted at the same time the microwave industry was developing new collaboration and coordination agreements, and took into consideration the industry's expressed desire to have common carrier and POFS microwave services treated in the same fashion when appropriate.[352] Because each of the microwave services share at least some frequencies with other microwave services, and because some frequencies are shared with government users, the rules minimize repetition, reduce the potential for interference, and aid different microwave users in efficient use of the microwave spectrum.

Part 101 also contains competitive bidding rules (Subparts M and N) that, in conjunction with our spectrum allocation rules, promote economic growth and enhance access to telecommunications service offerings for consumers, producers, and new entrants. The competitive bidding rules are structured to promote opportunity and competition. This has resulted in the rapid implementation of new and innovative services and the efficient use of spectrum use, thereby fostering economic growth. In contrast to lotteries and comparative hearings, auctions are faster, more efficient, and more likely to get spectrum to entities that value it the most. Through these rules, the Commission has recovered a portion of the value of the public spectrum.

Disadvantages

Because the Part 101 rules represent a relatively new consolidation of Parts 21 and 74, licensees and applicants have identified certain rules that are ambiguous or confusing, and certain technical characteristics – including those relating to frequency tolerance, spectrum efficiency, and antenna standards

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352 *See Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 15 FCC Rcd 3129 (2000) (*Part 101 NPRM*) at ¶ 7.

– that could be modified.[353] In addition, some rules could be candidates for further consolidation or streamlining.[354] For example, the current rules do not allow shared use among providers and between POFS and common carrier licensees.

Recent Efforts

The Commission is in the midst of a comprehensive re-evaluation of the Part 101 rules.[355] The *Part 101 NPRM*, which was released on February 14, 2000, proposes to eliminate rules that are duplicative, outmoded, or otherwise unnecessary; it also seeks comment on specific proposals to "examine the[] rules and procedures and offer their view and explanations of ways to streamline them and to make sure that the regulations conform with the Communications Act of 1934, as amended."[356] The pleading cycle for the *Part 101 NPRM* closed August 4, 2000.[357]

The Commission has made significant changes to the competitive bidding rules of Part 1, subpart Q. In the *Part 1 Third Report and Order*,[358] the Commission made substantive amendments and modifications to the competitive bidding rules for all auctionable services. These changes to the competitive bidding rules are intended to streamline regulations and eliminate unnecessary rules wherever possible, increase the efficiency of the competitive bidding process, and provide more specific guidance to auction participants. The changes also advance our auction program by reducing the burden on the Commission and the public of conducting service-by-service auction rule makings, such as those rule makings that created the competitive bidding rules of Subparts M and N.

Recommendation

Because of the ongoing rulemaking embodied in the *Part 101 NPRM*, staff does not recommend that any additional changes be made to the rules within the context of the biennial regulatory review. Indeed, the pending rulemaking engages in the same type of comprehensive examination of our service and technical rules that we are undertaking as part of the larger biennial regulatory review process.

In general, the competitive bidding rules in this subpart are integral to the basic licensing and spectrum management functions performed by the Commission. The necessity for these rules is also not significantly affected by changes in the level of competition in the auctionable services. In addition, the Commission has significantly revised and streamlined the competitive bidding rules in this subpart in several proceedings. Therefore, the staff concludes that significant modification or repeal of the Part 101 competitive bidding rules is not necessary at this time. However, to the extent that service-specific auction rules are duplicative of the consolidated auction rules in Part 1, the staff recommends that they be modified or eliminated.

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353 *Id.* at ¶ 1.

354 *Id*.

355 *See Id.*

356 *Id.* at ¶ 2.

357 *See* 65 Fed Reg 38333-01 (June 20, 2000).

358 *See* Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, ET Docket No. 94-32, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374 (1997) (modified by *Erratum*, DA 98-419 (rel. Mar. 2, 1998) (*Part 1 Third Report and Order*).

PART 101, SUBPART G – 24 GHZ SERVICE AND DIGITAL ELECTRONIC MESSAGE SERVICE

Description

Part 101 contains licensing, technical, and operational rules for fixed operational microwave services that require operating facilities on land or in certain offshore coastal areas. This report focuses on subpart G, which contains rules for the 24 GHz Service and the Digital Electronic Message Service (DEMS). DEMS systems are common carrier point-to-multipoint microwave networks designed to communicate information between a fixed (nodal) station and a multiple fixed user terminals,[359] and this subpart was originally intended to accommodate operation of high-speed, two-way, point-to-multipoint terrestrial microwave transmission systems.[360]

DEMS was originally licensed for use in the 18.82-18.92 GHz and 19.16-19.26 GHz bands. It was subsequently reallocated to the 24.25-24.45 GHz and 25/05-25.25 GHz bands.[361]

Purpose

The purpose of the Part 101 subpart G rules is to establish the rules for allocation and use of wireless services at 24 GHz (including DEMS), to ensure efficient spectrum use, and to prevent interference.

Analysis

Status of Competition

Under the original DEMS grants in the 1980s, the service was not initially commercially successful.[362] In the early 1990s, a small number of companies began acquiring licenses in approximately thirty of the nation's largest markets.[363] The majority of licenses are currently held by Teligent. The 24 GHz spectrum used by DEMS has been identified as a potential competitor in the local exchange telephone market.[364] Teligent, which recently completed its initial plan to roll out service in 40 U.S. markets, provides a bundle of broadband fixed wireless telecommunication services to small- and medium-sized businesses.

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359 *See Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules to Allocate Spectrum at 18 GHz for, and to Establish other Rules and Policies Pertaining to, the Use of Radio in Digital Termination Systems and in Point-to-Point Microwave Radio Systems for the Provision of Digital Electronic Message Services, and for other Common Carrier, Private Radio, and Broadcast Auxiliary Services; and to Establish Rules and Policies for the Private Radio Use of Digital Termination Systems at 10.6 GHz,* 54 Rad. Reg. 2d 1091 (1983).

360 *See id.*

361 *See Amendment to Parts 1, 2, and 101 of the Commission's Rules to License Fixed Services at 24 GHz, Notice of Proposed Rulemaking*, 14 FCC Rcd 19263, 19267 ¶ 5 (1999) (*24 GHz NPRM*).

362 *Id.* at 14 FCC Rcd 19265 ¶ 2.

363 *See Amendment of the Commission's Rules to Relocate the Digital Electronic Message Service From the 18 GHz to the 24 GHz Band and to Allocate the 24 GHz Band for Fixed Service, Memorandum Opinion and Order*, 13 FCC Rcd 15147, 15149 ¶ 6 (1998) (*DEMS MO&O*).

364 See *24 GHz NPRM*, 14 FCC Rcd at 19275 ¶ 20.

Advantages

The current rules provide a clear regulatory framework for the development of competitive fixed wireless services. The existing technical and operational rules are necessary for administration of a radio service at 24 GHz.

Disadvantages

The current subpart G rules were written when the primary use of DEMS was expected to be by businesses requiring internal networks to distribute documents, share data, and hold teleconferences. Accordingly, some of the terminology reflects this initial service concept. Mobile service is not permitted in the 24 GHz band.

Recent Efforts

In 1999, the Commission initiated a rulemaking proceeding (WT Docket No. 99-327) in which it undertook a comprehensive review of use of the 24 GHz band. In a Report and Order adopted July 25, 2000, the Commission revised Part 101 subpart G to comprehensively regulate operations within the 24 GHz band. Under the newly adopted changes, the Commission will license the 24 GHz band in 40 MHz channel pairs, provide 24 GHz band licensees more flexibility in system design, implement a ten-year license term and a "substantial service" requirement at renewal, allow 24 GHz band licensees to partition and/or disaggregate their licenses, and introduce flexible technical standards. Existing DEMS licensees are treated as incumbent licensees subject to the new 24 GHz rules.

Recommendation

In light of the Commission's comprehensive review of its 24 GHz rules in WT Docket No. 99-327, the staff concludes that issues pertaining to Subpart G are being adequately addressed in that proceeding.

PART 101, SUBPARTS L (LOCAL MULTIPOINT DISTRIBUTION SERVICE (LMDS)) AND M (COMPETITIVE BIDDING PROCEDURES FOR LMDS)

Description

Part 101[365] contains licensing, technical, and operational rules for the fixed microwave radio services. Local Multipoint Distribution Service (LMDS) systems are fixed point-to-point or point-to-multipoint radio systems that consist of hub and subscriber stations. LMDS licensees may provide a variety of services, including high-speed data and Internet services and multi-channel video programming distribution.[366]

Subpart L contains licensing, technical, and operational rules for LMDS. In general, the rules in this part: (1) provide eligibility restrictions in this service; (2) define the service area of LMDS licenses; (3) specify the permissible operations for authorized systems; (3) specify the frequencies available to LMDS licensees; (4) establish license terms; (5) establish the minimum construction or coverage requirements for LMDS licensees; and (6) define system operations and permissible communication services.

Subpart M contains competitive bidding rules and procedures for commercial licenses in LMDS. In particular, the rules, on a service-specific basis: (1) provide competitive bidding mechanisms and design options; (2) establish application, disclosure and certification procedures for short- and long-form applications; (3) specify down payment, unjust enrichment, withdrawal and default mechanisms; (4) provide definitions of gross revenues for designated entities and specify the bidding credits for which designated entities qualify; and (5) provide eligibility and technical requirements for partitioning and disaggregation.

Purpose

The purpose of the Part 101 rules is to establish basic ground rules for assignment of spectrum for private operational, common carrier, and LMDS fixed microwave operations that require operating facilities on land or in specified offshore coastal areas. Subpart L contains the basic licensing and operational rules for LMDS. Subpart M helps to ensure access to new telecommunications offerings by ensuring that all customer segments are served, that there is not an excessive concentration of licenses, and that small businesses, rural telephone companies, and businesses owned by women and minorities will have genuine opportunities to participate in the provision of service.

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365 47 C.F.R. Part 101.

366 *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Sixth Notice of Proposed Rulemaking*, 14 FCC Rcd 21520 ¶ 32 (1999) (*LMDS 6th NPRM*).

Analysis

Status of Competition

LMDS is a "nascent market."[367] The initial LMDS operator, Cellularvision, no longer provides multi-channel video programming distribution services, and has announced plans to offer high-speed data access on a portion of its original spectrum. The remaining licenses were issued by auctions held in March 1998 and April and May 1999. Accordingly, LMDS equipment is still subject to limited availability and the majority of licensees are still developing their systems.[368] LMDS will most likely compete with wireless and wireline broadband service providers targeting small and medium businesses.[369]

Advantages

The Subpart L rules provide licensees with broad flexibility to identify and implement services in response to market demand. The Commission recently allowed LMDS eligibility restrictions for incumbent local exchange carrier and cable companies to sunset;[370] this development should provide access to additional capital to develop LMDS fully, make administration of LMDS consistent with other competitive services, and aid the development of LMDS in rural markets.[371]

The Subpart M competitive bidding rules, in conjunction with our spectrum allocation rules, promote economic growth and enhance access to telecommunications service offerings for consumers, producers, and new entrants. The competitive bidding rules of Subpart M were structured to promote opportunity and competition. This has resulted in the rapid implementation of new and innovative services and the efficient use of spectrum use, thereby fostering economic growth. In contrast to lotteries and comparative hearings, auctions are faster, more efficient, and more likely to get spectrum to entities that value it the most. Through these rules, the Commission has recovered a portion of the value of the public spectrum.

Disadvantages

There are no discernable disadvantages to the LMDS rules. The existing rules consist of technical and operational rules that are necessary for administration of the service.

The Subpart M competitive bidding rules have no significant disadvantages. Nevertheless, the rules impose higher transaction costs to auction participants. For example, auction transaction costs are higher than the transaction costs for lotteries. In addition, because the need remains for service-specific notice and comment proceedings prior to the auction event, there is some delay in licensing. These delays, however, are far less than other licensing mechanisms.

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367 *Id.*

368 See *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Third Report and Order and Memorandum Opinion and Order,* FCC 00-223 (June 27, 2000) at App. B (*LMDS 3rd R&O*) for a comprehensive list of LMDS launches and the types of service each carrier is providing.

369 *LMDS 3rd R&O*.

370 *LMDS 3rd R&O*.

371 *Id.* at ¶ 33.

Recent Efforts

The June 23, 2000, *LMDS Third R&O* allowed the cross-ownership restriction that prohibited incumbent local exchange carriers and cable companies from having an attributable interest in the LMDS A block license that overlaps with ten percent or more of the population in their service areas to expire on June 30. The decision to allow the cross-ownership rule to sunset was based on a thorough analysis of competitive issues and the LMDS market.

The Commission has made significant changes to the competitive bidding rules of Part 1 Subpart Q. In the *Part 1 Third Report and Order*,[372] the Commission made substantive amendments and modifications to the competitive bidding rules for all auctionable services. These changes to the competitive bidding rules are intended to streamline regulations and eliminate unnecessary rules wherever possible, increase the efficiency of the competitive bidding process, and provide more specific guidance to auction participants. The changes also advance our auction program by reducing the burden on the Commission and the public of conducting service-by-service auction rule makings, such as those rule makings that created the competitive bidding rules of Subpart M.

Recommendation

The staff recommends that no substantive changes be made to this subpart at this time. Certain nonsubstantive revisions could be made to the LMDS rules for the purposes of simplification and to provide clarity to licensees and applicants.[373] The staff also concludes that substantive modification of the Subpart M competitive bidding rules is not necessary at this time. In general, the competitive bidding rules in this subpart are integral to the basic licensing and spectrum management functions performed by the Commission in LMDS. However, the Commission has consolidated its competitive bidding rules in Part 1, with the goal of having future auctions be conducted in accordance with Part 1 rules. Therefore, to the extent that future auctions are necessary in LMDS, the staff recommends that they be governed by Part 1, and that consideration be given to eliminating or phasing out the separate rules in this subpart to the extent they are redundant.

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[372] *See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374 (1997) (modified by *Erratum*, DA 98-419 (rel. Mar. 2, 1998)) (*Part 1 Third Report and Order*).

[373] For example, Section 101.1001, 47 C.F.R. § 101.1001, should be amended to remove the cross-reference to now-deleted Section 100.1003.

SEPARATE STATEMENT OF COMMISSIONER HAROLD FURCHTGOTT-ROTH

Re Public Notice, Commission Seeks Comment on Biennial Review 2000, Staff Report and Rule Appendix (rel. September 19, 2000).

I wish to applaud the Chairman and the staff for their extensive efforts to generate a 2000 Biennial Review that vastly improves on the 1998 version. Today's report is far more comprehensive and rigorous than our effort two years ago.[1] It also comes much closer to achieving the goals of Section 11. However, it is still less than perfect.

Going forward, it is important that the Commission continue to improve its efforts to fulfill the substantial task imposed by the biennial review statute. The Act provides that the Commission "shall review all regulations . . . that apply to . . . any provider of telecommunications service; and shall determine whether any such regulation is no longer necessary in the public interest as a result of meaningful economic competition . . . ." Although the staff report encompasses every relevant rule Part, today's report does not detail that review on a rule-by-rule basis. It is my hope and expectation that future biennial reviews will provide the public with a rule-by-rule rationale for the continued utility of each individual regulation. Although this year's report is far more detailed than 1998's review, the public is still not able to identify and assess the rationale for each individual rule. Nor can the public determine the particular reasoning that the Commission used to determine whether any rule: (1) was once in the public interest; (2) remains in the public interest today; or (3) will remain in the public interest in the future. Nonetheless, today's report is an important step forward in achieving that ultimate goal.[2]

Public participation in the biennial review process is a critical element in its success. The public is in the best position to assess whether individual rules have outlived their usefulness or should be modified. This is an important opportunity for the public to comment on how the FCC can better do its job. These comments will form an important foundation for the proceedings that will grow out of the staff report.

As the public examines today's staff report, I would like to call particular attention to a few key elements. First, the public notice seeks comment on a proposal to incorporate a biennial review analysis in each new rulemaking proceeding. Such an initial analysis would set forth the original purpose of the rule, the means by which the rule was intended to advance that purpose, and the state of competition in the relevant market at the time the rule was promulgated. This analysis would be included in each proceeding that created a new rule. Then subsequent biennial reviews, rather than recreating the rationale for a given rule from archives, will be able simply to assess whether the original basis is still valid. Such an open and transparent process will also facilitate the rule-by-rule examination that I hope will be a part of future biennial reviews.

The Office of the Managing Director has also set forth a proposal that warrants special attention. The Managing Director proposes to create an intelligent, integrated, information management system known as the "Intelligent Gateway."[3] As part of this proposal, the staff report recommends that the Commission consider development of a public tracking system that will allow the public to monitor the procedural status of items as they move through the Commission. I have long voiced concern over our policy process that seems to require parties to retain "inside the beltway" lobbyists to pierce the veil of Commission proceedings. The creation of a public tracking system would be an important step towards

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[1] Separate Statement of Commissioner Harold Furchtgott-Roth, 1998 Biennial Review, Notice of Inquiry, 13 FCC Rcd. 11276 (1998).

[2] In particular, I wish to applaud the efforts of the International Bureau (IB). IB's detailed and ambitious regulatory streamlining proposals are precisely the type of innovative and deregulatory initiatives that biennial review is designed to foster.

[3] Report at ¶¶ 207-209.

elimination of some of the unnecessary opaqueness that has been a part of our decision-making.

The report also touches on one other issue that I have become particularly concerned about: the rigorousness of our Regulatory Flexibility Act analysis.[4] In these rapidly evolving economic times, it is particularly important that the Commission carefully examine the impact of its rules on small businesses. The biennial review process provides another opportunity for the small business community to suggest changes to our regulatory policies that may lessen the regulatory burden without undermining our obligations under the Act. In the future, the Commission should closely examine its policy development process to ensure that small business considerations are part of the policy development process, not an administrative afterthought.[5]

On balance, I wish to applaud the Commission's staff for today's report. The final product has only been possible because staff willingly tackled biennial review in addition to their already significant workloads. In particular, congratulations go out to the biennial review team's leadership: Mania Baghdadi, David Furth, Lisa Gelb, Anna Gomez, Jake Jennings, Cheryl Kornegay, Jeff Lanning, Michael Marcus, Pam Megna, Claudia Pabo, Richard Welch, and Jack Zinman. Each of these team members has gone above and beyond the call of duty. I would also like to take this opportunity to thank William Trumpbour, a former legal intern in my office, who devoted significant energies to producing the database that assisted in the preparation of the staff report. Finally, I would like to thank Anna, Jeff, Pam, Lisa and David for their leadership, hard work, and regular briefings on this important project. I look forward to working with them, the rest of the staff and the public in the months ahead as we move to the next stage of the review.

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[4] Report at ¶¶ 176-177.

[5] In addition to these areas, the Wireless Bureau has announced its intention to begin a review to determine whether the spectrum cap is necessary. Report at ¶ 106. I have long voiced concern about the utility of the caps. See Separate Statement of Commissioner Harold Furchtgott-Roth in 1998 Biennial Regulatory Review – Spectrum Aggregation Limits for Wireless Telecommunications Carriers, Report and Order, 15 FCC Rcd 9219 (1999). I look forward to initiation of that proceeding and the development of a full record on spectrum cap issues.